SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 707.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE, PETITIONER,

vs.

SARGENT LAND COMPANY.

No. 708.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE, PETITIONER,

vs.

SUTTON LAND COMPANY.

No. 709.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE, PETITIONER,

vs.

KEARSARGE LAND COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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1 In the District Court of the United States for the District of Minnesota, Third Division.

Sargent Land Company, a corporation, Plaintiff,
No. 715. vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

Sutton Land Company, a corporation, Plaintiff,
No. 716. vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

Kearsarge Land Company, a corporation, Plaintiff,
No. 717. vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

Pleas before the Honorable, the Judges of the United States District Court for the District of Minnesota.

Be It Remembered, that on the 15th day of April, A. D. 1913, each of the plaintiffs in the above entitled action filed in the office of the Clerk of said Court its complaint, which complaints are, respectively, in the words and figures following, to-wit:

2 (Complaint of Sargent Land Company.)

Sargent Land Company, a corporation, Plaintiff,
vs.
Fred Von Baumbach, Collector of Internal Revenue, Defendant.

The plaintiff, complaining of the defendant above named, alleges:

1. The plaintiff is, and since the 20th day of February, 1906, has been, a corporation having a capital stock, duly organized and existing under the laws of the state of Minnesota, having its principal office in the city of Minneapolis in said state and, during all of said time, has been and is an inhabitant of the District of Minnesota, and of the Fourth Division of said district.

2. The defendant, on the 27th day of February, 1913, and for a long period prior thereto, was, has been since, and now is, the Collector of Internal Revenue of the United States for

the District of Minnesota, duly commissioned as such collector pursuant to the laws of the United States, and is an inhabitant of the District of Minnesota and of the Third Division thereof.

3. The plaintiff was organized as a corporation as aforesaid, under the laws of the state of Minnesota, by the execution, filing and publication of its Articles of Incorporation, a copy of which, marked Exhibit "A", is hereto attached, and is hereby referred to and made a part of this complaint.

3 The plaintiff was so organized for the primary purposes of receiving, and uniting in one ownership, the title to certain lands, until then held by its numerous stockholders in individual ownership, in proportions varying from one-fourth (1/4) to one one-hundred-and-eighth (1/108) thereof, and of liquidating and converting the same into money and distributing the proceeds thereof to said various owners in proportion to their former respective holdings in said lands. After its incorporation as aforesaid, the plaintiff received from its stockholders, and has ever since been the owner of, the said lands, subject to the rights of the vendees of the iron ore therein, as hereinafter alleged. The plaintiff corporation was not organized for profit, or with a view to carrying on or doing business; and, at no time since its organization as aforesaid, has the plaintiff carried on or done business of any kind, either for profit or otherwise; and the plaintiff is not, and never has been, a corporation subject to assessment for, or liable to pay to the United States, a special excise tax under the Act of Congress of August 5, 1909, or any other law.

4. At the time of the incorporation of the plaintiff, the only substantial value in its said lands consisted in deposits of iron ore thereon, and no substantial value therein has since developed or now exists. Prior to the incorporation of plaintiff, the iron ore upon portions of said land had been sold by the individual owners thereof, at and for a fixed and stated price per ton, and said lands were conveyed to and acquired by the plaintiff subject to the contracts of such sales, and no other sales of any ore thereon have been made except a similar sale made by this plaintiff January 2nd, 1907. The income of the plaintiff during the years 1909, 1910 and 1911 was derived almost exclusively from payments made under said con-
4 tracts of sale of iron ore, and no part of said income was derived from the carrying on or doing of any business.

5. The value of said iron ore so sold as aforesaid was fixed by said contracts, and, irrespective of any fluctuations in the market value thereof in the hands of the vendees of said ore or

their successors in interest therein, the value of said ores to the plaintiff is not, and can never be, other or greater than the sum named in its contracts of sale of said ore, and there has been, and can be, no increment in value or any profit as respects the plaintiff in said ores or lands.

6. On the 28th of December, 1909, the plaintiff duly amended its said Articles of Incorporation in the manner provided by the laws of the state of Minnesota, in order more clearly to set forth the original purposes and intentions of the incorporators, so that Article I thereof was changed from the form in which it was originally adopted as set forth in Exhibit "A", and the purposes and powers of the plaintiff were limited, and became as follows, to-wit:

"The general purpose of the corporation is to unite in one ownership the undivided fractional interests of its various stockholders in lands, tenements and hereditaments, and to own such property, and, for the convenience of its stockholders, to receive, and distribute among them, the proceeds of any disposition of such property at such times, in such amounts, and in such manner, as the board of directors may determine."

The purposes and powers of the plaintiff have since been, and now are, restricted by said amendment as aforesaid, and the plaintiff, since the date last named, has not been authorized to carry on or do business within the meaning of said Act of Congress of August 5, 1909.

5 7. After the approval of said Act of August 5, 1909, the defendant, as such collector as aforesaid, transmitted to plaintiff printed forms prepared under the direction of the United States Commissioner of Internal Revenue for the making of a return by plaintiff of its income for the year 1909, as required by said Act. Plaintiff forthwith notified the defendant that it was not, and during the year 1909 had not been, carrying on or doing any business; that it had derived no income whatsoever from carrying on or doing business during said year; that it was not a corporation organized for profit, and was not subject to the provisions of said Act of August 5th, and was not liable to pay the excise tax therein provided for.

Thereafter, during a long period, correspondence and negotiations relative to the liability of plaintiff to make return of income under said Act of August 5th was conducted between the plaintiff and the defendant acting under the instructions

of the United States Commissioner of Internal Revenue, which correspondence and negotiations were finally concluded in the month of September, 1912, by the decision of said Commissioner that the plaintiff was subject to the provisions of said Act of August 5, 1909, and liable to pay the excise tax provided for by said Act. Awaiting such decision, and solely by reason of the delay of said Commissioner in arriving at and announcing the same, plaintiff refrained from preparing and filing its returns of income required by said Act until the dates hereinafter mentioned.

8. On or about the 26th day of September, 1912, in pursuance of said decision of said Commissioner, the defendant, as such collector as aforesaid, demanded of the plaintiff the making and filing by it, in the office of said collector, of a return, in the form prescribed by the Commissioner, of the net
6 income of the plaintiff for the years 1910 and 1911, and threatened the plaintiff with the imposition of the penalties prescribed by said Act of Congress of August 5, 1909, in case of non-compliance with said demand. Pursuant thereto, but under protest, nevertheless, that it did not come within the purview of said Act of Congress, that it was not a corporation organized for profit, and that it was not carrying on or doing business during said years, and moved thereto solely by the threat of said penalties, and under the duress thereof, the plaintiff on or about the 23rd day of October, 1912, filed with the defendant true and accurate returns of its income for said years of 1910 and 1911, respectively. During each of said years there had occurred an actual depreciation in value of the property and capital assets of the plaintiff, and each of said returns showed such depreciation of the property of the plaintiff during the year therein referred to, and other deductions, as authorized by the law, in an aggregate amount in excess of the gross income of the plaintiff for such year.

9. Thereafter, on or about December 20, 1912, the defendant, as such collector, in like manner as aforesaid, and with a similar threat of the imposition of the penalties of said Act of Congress in case of non-compliance by plaintiff with said demand, demanded from, and required of, plaintiff that it make and file with the defendant, as such collector, a return of its income for the year 1909. Pursuant thereto, the plaintiff made and filed with the defendant, in the manner required by law, on or about Jaunary 14, 1913, a return of its income for said year 1909, which showed a depreciation in the property and capital assets of the plaintiff, and other deductions authorized by law, in an amount in excess of the gross income of the plaintiff for said year. Said depreciation actually occurred

and said other deductions were actually paid out by
7 plaintiff during said year. Said return was so made
and filed under protest, however, that plaintiff was not a corporation organized for profit, that it was not carrying on or doing business during said year 1909, and that it was not a corporation falling within the purview of said Act of Congress.

10. Notwithstanding the exemption of plaintiff from liability to pay any excise tax under said Act of Congress, and notwithstanding the depreciation in the value of its property and the deductions allowed by law during each of said years, the Commissioner of Internal Revenue of the United States assessed against the plaintiff a tax amounting to $2663.60, as a corporation tax for the year 1909 under the internal revenue laws of the United States, and, in addition thereto, as a penalty for the alleged wrongful delay of the plaintiff in making and filing its return for said year, the sum of $1331.80, making a total of $3995.40; and said Commissioner assessed against the plaintiff, for the year 1910, under said laws, a tax of $3847.34, and, in addition thereto, as a penalty for the alleged wrongful delay of the plaintiff in making and filing its return for said year, the sum of $1923.67, making a total of $5771.01; and for the year 1911, said Commissioner assessed a similar tax under said laws in the sum of $4916.20, and, in addition thereto, as a penalty for the alleged wrongful delay of plaintiff in making and filing its return for said year, the sum of $2458.10, making a total of $7274.30.

On the 25th of January, 1913, the defendant, as such collector as aforesaid, notified the plaintiff of each of such assessments and demanded payment of said sums on or before the 6th day of February, 1913, and threatened, unless said
sums were paid on or before said last named date, to
8 collect the same by distraint and sale of plaintiff's property, together with the penalties and interest in such case collectible under said law.

11. After the making of said demands by the defendant, the plaintiff duly made and filed with the defendant, in the form and manner provided by the law and in accordance with the practice in such case prescribed, a claim for abatement of said taxes so assessed by said Commissioner for each of said years, upon the grounds that the plaintiff was not subject to such tax and that the same was illegally assessed. Said claims were duly received and considered by said Commissioner, and, on the 15th day of February, 1913, were, and each of them was, rejected. Thereafter, on the 18th day of February, 1913, the

defendant, as such collector as aforesaid, demanded from plaintiff the payment of said tax for each of said years on or before ten days, and threatened, in case of non-compliance therewith, to proceed to collect the same by distraint and sale of plaintiff's property, with penalties and interest as specified in the law.

12. For its first cause of action, the plaintiff further alleges that, pursuant to the demand therefor, and moved thereto by said threat of the defendant, and under the duress thereof, it paid to the defendant, on or about the 28th day of February, 1913, for and on account of said tax for the year 1909 and the addition thereto, the sum of $3995.40; that plaintiff had no net income during said year, and that said tax was illegally assessed and unauthorized by law, for the reasons hereinbefore stated, as defendant was informed and well knew prior to demanding and receiving the same; and the requirement of payment thereof by the defendant and the receipt thereof by him were illegal and wrongful; that thereafter, and prior to the commencement of this action, the plaintiff duly made
9 and filed with the defendant its claim for the refunding of said payment and a demand for the refundment thereof, which claim and demand were rejected and refused; there is now due and owing to the plaintiff, from and by the defendant, the sum of $3995.40, with interest thereon at the rate of six per centum per annum from February 28, 1913.

13. For its second cause of action herein, the plaintiff hereby refers to and re-alleges each and every of the foregoing paragraphs numbered 1 to 11, both inclusive, and further alleges that, pursuant to the demand therefor, and moved thereto by said threat of the defendant, and under the duress thereof, it paid to the defendant, on or about the 28th day of February, 1913, for and on account of said tax for the year 1910 and the addition thereto, the sum of $5771.01; that plaintiff had no net income during said year, and that said tax was illegally assessed and unauthorized by law, for the reasons hereinbefore stated, as defendant was informed and well knew prior to demanding and receiving the same, and the requirement of payment thereof by the defendant and the receipt thereof by him were illegal and wrongful; that thereafter, and prior to the commencement of this action, the plaintiff duly made and filed with the defendant its claim for the refunding of said payment and a demand for the refundment thereof, which claim and demand were rejected and refused; there is now due and owing to the plaintiff, from and by the defendant, the sum of $5771.01, with interest thereon at the rate of six per centum per annum from February 28, 1913.

14. For its third cause of action herein, the plaintiff hereby refers to and re-alleges each and every of the foregoing paragraphs numbered 1 to 11, both inclusive, and further
10 alleges that, pursuant to the demand therefor and moved thereto by said threat of the defendant, and under the duress thereof, it paid to the defendant, on or about the 28th day of February, 1913, for and on account of said tax for the year 1911 and the addition thereto, the sum of $7374.30; that plaintiff had no net income during said year, and that said tax was illegally assessed and unauthorized by law, for the reasons hereinbefore stated, as defendant was informed and well knew prior to demanding and receiving the same, and the requirement of payment thereof by the defendant and the receipt thereof by him were illegal and wrongful; that thereafter, and prior to the commencement of this action, the plaintiff duly made and filed with the defendant its claim for the refunding of said payment and a demand for the refundment thereof, which claim and demand were rejected and refused; there is now due and owing to the plaintiff from and by the defendant the sum of $7374.30, with interest thereon at the rate of six per centum per annum from February 28, 1913.

15. This case arises under the laws of the United States providing for internal revenue and this court has jurisdiction thereof.

Wherefore, plaintiff demands judgment against the defendant for the sum of seventeen thousand one hundred and forty and 71/100 ($17,140.71) dollars, with interest thereon at the rate of six per centum per annum from February 28, 1913, together with its costs and disbursements herein.

FRED B. SNYDER,
EDWARD C. GALE,
Attorneys for plaintiff, 810 Security Bank Bldg., Minneapolis, Minn.

John R. Van Derlip,
Of Counsel.

11 Exhibit "A."

Articles of Incorporation
of
Sargent Land Company.

We, the undersigned, for the purpose of forming a corporation under and pursuant to the provisions of Title 2 of Chapter 34, General Statutes of Minnesota 1894, and the acts amendatory thereof, do hereby associate ourselves as a body corporate, and do hereby adopt the following Articles of Incorporation:

Article I.

The name of this corporation shall be the "Sargent Land Company".

The general nature of its business shall be the buying, owning, exploring and developing, leasing, improving, selling and dealing in, lands, tenements and hereditaments, and the doing of all things necessary or incidental to the things above specified.

The principal place of transacting said business shall be at the city of Minneapolis in Hennepin County, Minnesota.

Article II.

The time for the commencement of this corporation shall be the twentieth day of February, A. D. 1906, and the period of continuance of this corporation shall be thirty (30) years.

Article III.

The amount of the capital stock of this corporation shall be One Hundred and Eight Thousand Dollars ($108,000), which shall be paid in, in money or property, in such manner and at such times as the Board of Directors may from time to time direct.

Article IV.

The highest amount of indebtedness or liability to which this corporation shall at any time be subject shall be the sum of One Hundred Thousand Dollars ($100,000).

Article V.

The names and places of residence of the persons forming this association for incorporation shall be John M. Longyear, of Marquette County, Michigan, Russell M. Bennett of Deephaven, Minnesota, Alfred F. Pillsbury, Fred B. Snyder and Carleton C. Pillsbury, all of Minneapolis, Minnesota.

Article VI.

The names of the first Board of Directors of said corporation are John M. Longyear, Russell M. Bennett, Edmund J. Longyear, Norman C. Richardson, Helen H. Bennett, Alfred F. Pillsbury, Charles S. Pillsbury, Fred B. Snyder, Carleton C. Pillsbury and Frank H. Carleton.

The first president shall be the said Charles S. Pillsbury. The first vice-president shall be John S. Pillsbury. The first secretary and treasurer shall be the said Russell M. Bennett.

12 The government of this corporation and the management of its affairs shall be vested in a board of ten directors and in a president, vice-president, secretary and treasurer, and such other officers and agents as may be from time to time appointed by the Board of Directors. Said directors and officers above named shall hold their respective offices until the first Tuesday of December, 1906, at which time, and on every succeeding first Tuesday of December thereafter, a board of ten directors shall be elected by the stockholders of said corporation, at an annual meeting of said stockholders to be held at the office of the corporation in the city of Minneapolis, or such other place as the board of directors may direct. Immediately after the election of the directors, or as soon thereafter as practicable, the directors shall meet and elect from their number or from the stockholders of the corporation, a president, vice-president, secretary and treasurer. Any member of the board of directors or any stockholder of the corporation may fill any two of said offices except that of president and vice-president, which offices shall not be filled by the same person. The directors and officers of this corporation shall hold their respective offices until their successors have been duly elected and shall enter upon their duties. In case of a vacancy in the board of directors on account of death, resignation or removal, a special meeting of the stockholders shall be called within forty-five (45) days thereafter and a new director elected to fill such vacancy in the manner hereinafter provided. In case of a vacancy in the office of president, vice-president, secretary or treasurer, caused by death, resignation or removal, the directors of said corporation, when the board of directors is filled as hereinabove provided, shall fill such vacancy. Regular and special meetings of the directors and stockholders may be held at such times and under such rules as may be prescribed by the by-laws of such corporation, but the first meetings of the Board of Directors and the stockholders of said corporation shall be held at the office of the corporation in the city of Minneapolis, Minnesota, on the second Tuesday of May, A. D. 1906, at ten and eleven o'clock in the forenoon respectively. Any director may be represented at any meeting of the Board of Directors by proxy if the stockholders of this corporation shall authorize such representation by by-law.

Article VII.

The capital stock of this corporation shall be divided into two thousand one hundred and sixty (2160) shares of fifty dollars ($50) each.

Article VIII.

No sale, assignment, transfer, hypothecation, pledge or other disposition of any stock in this corporation, shall be valid or effectual for any purpose, until there has first been endorsed upon the stock certificate to be affected by such sale, assignment, transfer, hypothecation, pledge or other disposition, the approval or consent of a majority of the Board of Directors of such corporation, sitting as a Board, to such sale, assignment, transfer, hypothecation, pledge or other disposition.

Article IX.

No mining lease or any interest therein owned by the corporation shall ever be hypothecated, sold, assigned or transferred, nor shall any real estate or any interest therein owned by this corporation, ever be mortgaged, sold, conveyed or leased for a period longer than one year, except upon the affirmative vote of the holders of seventy-five per cent. (75%) of the
13 shares of the capital stock of the corporation actually issued and outstanding, given at a regular [o-] special meeting of the stockholders.

Article X.

The title to the properties belonging to this corporation having been, prior to the transfer thereof to the corporation, vested in various persons owning, respectively, different undivided interests therein, and such owners having been, at the time of such transfer to the corporation, divided into two general classes, to-wit: the heirs at law, assigns and devisees of George A. Pillsbury and Margaret S. Pillsbury, his wife, Charles A. Pillsbury and Mary A. Pillsbury, his wife, and John S. Pillsbury, all deceased, constituting the class known as "The Pillsbury Heirs," who owned collectively an equal one-half part of all said properties, and Russell M. Bennett and John M. Longyear, constituting the other of said classes, who owned as tenants in common the other undivided one-half of all said properties; and this corporation having been formed, by mutual agreement of all said owners of both classes, for the more convenient handling, improvement, development and disposition of said properties, and it being the desire and intention of all said owners that an equal voice, in all matters relative to said properties, shall remain, and be maintained in the future, in said two classes:

It is hereby established as the perpetual and undeviating rule of this corporation that one-half of the entire board of directors of this corporation shall always be nominated by, and elected to represent, each of said two classes of former owners,

so that, as long as the whole number of directors shall be ten, five directors, and five only, shall be chosen by the stockholders of this corporation from the nominees of "The Pillsbury Heirs" constituting one class, and five directors, and five only, shall be chosen by such stockholders from nominees of said Bennett and said Longyear constituting the other class.

In case a vacancy shall occur in said board of directors, such vacancy shall be filled by a nominee of the class by which the director whose retirement caused such vacancy was nominated; and until this article shall be altered or abrogated by the vote of the stockholders of this corporation, as hereinafter provided, the equal division, numerically, of said board of directors, shall be strictly maintained, so that said "Pillsbury Heirs" and their successors in interest shall always be represented upon the board of directors of this corporation by one-half of the full authorized number of directors, and said Bennett and Longyear, and their successors in interest, shall always be represented upon said Board by one-half of the full authorized number of directors, and no amendment of these Articles of Incorporation shall be made changing the number of directors, except to an even number.

Article XI.

Article X of these Articles cannot be altered, amended or abrogated, except by the vote of ninety (90) per cent. of the shares of the capital stock of this corporation actually issued and outstanding, nor can any other article be altered, amended or abrogated, except by the vote of seventy-five (75) per cent. of the shares of the capital stock of this corporation, actually issued and outstanding, the vote in every case to be taken at a regular meeting of the stockholders, or at a special meeting of the stockholders called for that purpose.

14 Article XII.

Articles VIII and X and XI of the Articles of Incorporation shall be printed in full upon and as a part of every certificate of stock issued by this corporation.

Article XIII.

No by-law of this corporation embodying the provisions of Article X of these Articles of Incorporation shall be altered, amended or abrogated except by the vote of ninety (90) per cent. of the shares of the capital stock of this corporation actually issued and outstanding, [not] can any other by-law be altered or amended except by the affirmative vote of seventy-

five (75) per cent. of the capital stock of this corporation, actually issued and outstanding, the vote in every case to be taken at a regular meeting of the stockholders, or at a special meeting of the stockholders called for that purpose.

In Witness Whereof, we have hereunto set our hands and seals this 26th day of January, A. D. 1906.

In presence of
J. E. Sherman
Emily McNulty
As to John M. Longyear.

Harry E. Coleman
Clara B. Martin
As to all other signers.

(Seal) RUSSELL M. BENNETT
(Seal) JOHN M. LONGYEAR
(Seal) ALFRED F. PILLSBURY,
FRED B. SNYDER
(Seal) CARLETON C. PILLSBURY

State of Michigan,
County of Marquette—ss.

On the 26th day of January, A. D. 1906, before me, a notary public within and for said county, personally appeared John M. Longyear, to me known to be the person mentioned in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

(Seal) JAMES E. SHERMAN,
Notary Public, Marquette County, Mich.

State of Minnesota,
County of Hennepin—ss.

On this 9th day of February, A. D. 1906, before me, a notary public within and for said county, personally appeared Russell M. Bennett, Alfred F. Pillsbury, Fred B. Snyder and Carleton C. Pillsbury, to me known to be the persons mentioned in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

(Seal) HARVEY E. COLEMAN,
Notary Public, Hennepin County, Minn.

My commission expires May 1st, 1912.

15 State of Minnesota,
County of Hennepin—ss.

Russell M. Bennett being first duly sworn upon his oath says that he is the Secretary and Treasurer of Sargent Land Company, plaintiff in the foregoing and within entitled action; that he has heard read the foregoing complaint, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief and as to such matters he believes it to be true.

RUSSELL M. BENNETT.

Subscribed and sworn to before me this 14th day of April, A. D. 1913.

EDW. C. GALE,
Notary Public, Hennepin County, Minnesota.

My commission expires March 11th, 1914.

(Notarial Seal)

Endorsed: Filed in the District Court on April 15, 1913.

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16 (Complaint of Sutton Land Company.)

Sutton Land Company, a corporation, Plaintiff,
vs.
Fred Von Baumbach, Collector of Internal Revenue, Defendant.

The plaintiff, complaining of the defendant above named alleges:

1. The plaintiff is, and since the 20th day of February, 1906, has been, a corporation having a capital stock, duly organized and existing under the laws of the state of Minnesota, having its principal office in the city of Minneapolis in said state, and, during all of said time, has been and is an inhabitant of the District of Minnesota, and of the Fourth Division of said district.

2. The defendant, on the 27th day of February, 1913, and for a long period prior thereto, was, has been since, and now is, the Collector of Internal Revenue of the United States for the District of Minnesota, duly commissioned as such collector pursuant to the laws of the United States, and is an inhabitant of the District of Minnesota and of the Third Division thereof.

3. The plaintiff was organized as a corporation as aforesaid, under the laws of the state of Minnesota, by the execution, filing and publication of its Articles of Incorporation,

a copy of which, marked Exhibit "A," is hereto attached, and is hereby referred to and made a part of this complaint.

17 The plaintiff was so organized for the primary purposes of receiving, and uniting in one ownership, the title to certain lands, until then held by its numerous stockholders in individual ownership, in proportions varying from one-fourth (¼) to one one-hundred-and-eighth (1/108) thereof, and of liquidating and converting the same into money and distributing the proceeds thereof to said various owners in proportion to their former respective holdings in said lands. After its incorporation as aforesaid, the plaintiff received from its stockholders, and has ever since been the owner of, the said lands, subject to the rights of the vendees of the iron ore therein, as hereinafter alleged. The plaintiff corporation was not organized for profit, or with a view to carrying on or doing business; and, at no time since its organization as aforesaid, has the plaintiff carried on or done business of any kind, either for profit or otherwise; and the plaintiff is not, and never has been, a corporation subject to assessment for, or liable to pay to the United States, a special excise tax under the Act of Congress of August 5, 1909, or any other law.

4. At the time of the incorporation of the plaintiff, the only substantial value in its said lands consisted in deposits of iron ore thereon, and no substantial value therein has since developed or now exists. Prior to the incorporation of plaintiff, the iron ore upon portions of said land has been sold by the individual owners thereof, at and for a fixed and stated price per ton, and said lands were conveyed to and acquired by the plaintiff subject to the contracts of such sales, and no other sales of any ore thereon have been made. The income of the plaintiff during the years 1909, 1910 and 1911 was derived almost exclusively from payments made under said contracts of
18 sale of iron ore, and no part of said income was derived from the carrying on or doing of any business.

5. The value of said iron ore so sold as aforesaid was fixed by said contracts, and, irrespective of any fluctations in the market value thereof in the hands of the vendees of said ore or their succesors in interest therein, the value of said ores to the plaintiff is not, and can never be, other or greater than the sum named in its contracts of sale of said ore, and there has been, and can be, no increment in value or any profit as respects the plaintiff in said ores or lands.

6. On the 28th of December, 1909, the plaintiff duly amended its said Articles of Incorporation in the manner provided by the laws of the state of Minnesota, in order more clearly to

set forth the original purposes and intentions of the incorporators, so that Article I thereof was changed from the form in which it was originally adopted as set forth in Exhibit "A", and the purposes and powers of the plaintiff were limited, and became as follows, to-wit:

"The general purpose of the corporation is to unite in one ownership the undivided fractional interests of its various stockholders in lands, tenements and hereditaments, and to own such property, and, for the convenience of its stockholders, to receive, and distribute among them, the proceeds of any disposition of such property at such times, in such amounts, and in such manner, as the board of directors may determine."

The purposes and powers of the plaintiff have since been, and now are, restricted by said amendment a aforesaid and, the plaintiff, since the date last named, has not been authorized to carry on or do business within the meaning of said Act of Congress of August 5, 1909.

19 7. After the approval of said Act of August 5, 1909, the defendant, as such collector as aforesaid, transmitted to plaintiff printed forms prepared under the direction of the United States Commissioner of Internal Revenue for the making of a return by plaintiff of its income for the year 1909, as required by said Act. Plaintiff forthwith notified the defendant that it was not, and during the year 1909 had not been, carrying on or doing any business; that it had derived no income whatsoever from carrying on or doing business during said year; that it was not a corporation organized for profit, and was not subject to the provisions of said Act of August 5th, and was not liable to pay the excise tax therein provided for.

Thereafter, during a long period, correspondence and negotiations relative to the liability of plaintiff to make return of income under said Act of August 5th was conducted between the plaintiff and the defendant acting under the instructions of the United States Commissioner of Internal Revenue, which correspondence and negotiations were finally concluded in the month of September, 1912, by the decision of said Commissioner that the plaintiff was subject to the provisions of said Act of August 5, 1909, and liable to pay the excise tax provided for by said Act. Awaiting such decision, and solely by reason of the delay of said Commissioner in arriving at and announcing the same, plaintiff refrained from preparing and filing its returns of income required by said Act, until the dates hereinafter mentioned.

8. On or about the 26th day of September, 1912, in pursuance of said decision of said Commissioner, the defendant, as such collector as aforesaid, demanded of the plaintiff the making and filing by it, in the office of said collector, of a return, in the form prescribed by the Commissioner, of the net
20 income of the plaintiff for the years 1910 and 1911, and threatened the plaintiff with the imposition of the penaltie prescribed by said Act of Congress of August 5, 1909, in case of non-compliance with said demand. Pursuant thereto, but under protest, nevertheless, that it did not come within the purview of said Act of Congress, that it was not a corporation organized for profit, and that it was not carrying on or doing business during said years, and moved thereto solely by the treat of said penalties, and under the duress thereof, the plaintiff, on or about the 23rd day of October, 1912, filed with the defendant true and accurate returns of its income for said years of 1910 and 1911, respectively. During each of said years there had occurred an actual depreciation in value of the property and capital assets of the plaintiff, and each of said returns showed such depreciation of the property of the plaintiff during the year therein referred to, and other deductions, as authorized by the law, in an aggregate amount in excess of the gross income of the plaintiff for such year.

9. Thereafter, on or about December 20, 1912, the defendant, as such collector, in like manner as aforesaid, and with a similar threat of the imposition of the penalties of said Act of Congress in case of non-compliance by plaintiff with said demand, demanded from, and required of, plaintiff that it make and file with the defendant, as such collector, a return of its income for the year 1909. Pursuant thereto, the plaintiff made and filed with the defendant, in the manner required by law, on or about January 14, 1913, a return of its income for said year 1909, which showed a depreciation in the property and capital assets of the plaintiff, and other deductions authorized by law, in an amount in excess of the gross income of the plaintiff for said year. Said depreciation actually occurred and said other
21 deductions were actually paid out by plaintiff during said year. Said return was so made and filed under protest, however, that plaintiff was not a corporation organized for profit, that it was not carrying on or doing business during said year 1909, and that it was not a corporation falling within the purview of said Act of Congress.

10. Notwithstanding the exemption of plaintiff from liability to pay any excise tax under said Act of Congress, and notwithstanding the depreciation in the value of its property and the deductions allowed by law during each of said years,

the Commissioner of Internal Revenue of the United States assessed against the plaintiff a tax amounting to $187.92, as a corporation tax for the year 1909 under the internal revenue laws of the United States, and, in addition thereto, as a penalty for the alleged wrongful delay of the plaintiff in making and filing its return for said year, the sum of $93.96, making a total of $281.88; and said Commissioner assessed against the plaintiff, for the year 1910, under said laws, a tax of $175.34, and, in addition thereto, as a penalty for the alleged wrongful delay of the plaintiff in making and filing its return for said year, the sum of $87.67, making a total of $263.01; and for the year 1911, said Commissioner assessed a similar tax under said laws in the sum of $176.43, and, in addition thereto, as a penalty for the alleged wrongful delay of plaintiff in making and filing its return for said year, the sum of $88.22, making a total of $264.65.

On the 25th of January, 1913, the defendant, as such collector as aforesaid, notified the plaintiff of each of such assessments and demanded payment of said sums on or before the 6th day of February, 1913, and threatened, unless said sums were paid on or before said last named date, to
22 collect the same by distraint and sale of plaintiff's property, together with the penalties and interest in such case collectible under said law.

11. After the making of said demands by the defendant, the plaintiff duly made and filed with the defendant, in the form and manner provided by the law and in accordance with the practice in such case prescribed, a claim for abatement of said taxes so assessed by said Commissioner for each of said years, upon the grounds that the plaintiff was not subject to such tax and that the same was illegally assessed. Said claims were duly received and considered by said Commissioner, and, on the 15th day of February, 1913, were, and each of them was, rejected. Thereafter, on the 18th day of February, 1913, the defendant, as such collector as aforesaid, demanded from plaintiff the payment of said tax for each of said years on or before ten days, and threatened, in case of non-compliance therewith, to proceed to collect the same by distraint and sale of plaintiff's property, with penalties and interest as specified in the law.

12. For its first cause of action, the plaintiff further alleges that, pursuant to the demand therefor, and moved thereto by said threat of the defendant, and under the duress thereof, it paid to the defendant, on or about the 28th day of February, 1913, for and on account of said tax for the year 1909 and the

addition thereto, the sum of $281.88; that plaintiff had no net income during said year, and that said tax was illegally assessed and unauthorized by law, for the reasons hereinbefore stated, as defendant was informed and well knew prior to demanding and receiving the same; and the requirement of payment thereof by the defendant and the receipt thereof by him were illegal and wrongful; that thereafter, and prior to
23 the commencement of this action, the plaintiff duly made and filed with the defendant its claim for the refunding of said payment and a demand for the refundment thereof, which claim and demand were rejected and refused; there is now due and owing to the plaintiff, from and by the defendant, the sum of $281.88, with interest thereon at the rate of six per centum per annum from February 28, 1913.

13. For its second cause of action herein, the plaintiff hereby refers to and re-alleges each and every of the foregoing paragraphs numbered 1 to 11, both inclusive, and further alleges that, pursuant to the demand therefor, and moved thereto by said threat of the defendant, and under the duress thereof, it paid to the defendant, on or about the 28th day of February, 1913, for and on account of said tax for the year 1910 and the addition thereto, the sum of $263.01; that plaintiff had no net income during said year, and that said tax was illegally assessed and unauthorized by law, for the reasons hereinbefore stated, as defendant was informed and well knew prior to demanding and receiving the same, and the requirement of payment thereof by the defendant and the receipt thereof by him were illegal and wrongful; that thereafter, and prior to the commencement of this action, the plaintiff duly made and filed with the defendant its claim for the refunding of said payment and a demand for the refundment thereof, which claim and demand were rejected and refused; there is now due and owing to the plaintiff, from and by the defendant, the sum of $263.01, with interest thereon at the rate of six per centum per annum from February 28, 1913.

14. For its third cause of action herein, the plaintiff hereby refers to and re-alleges each and every of the foregoing paragraphs numbered 1 to 11, both inclusive, and further
24 alleges that, pursuant to the demand therefor and moved thereto by said threat of the defendant, and under the duress thereof, it paid to the defendant on or about the 28th day of February, 1913, for and on account of said tax for the year 1911 and the addition thereto, the sum of $264.65; that plaintiff had no net income during said year, and that said tax was illegally assessed and unauthorized by law, for the reasons hereinbefore stated, as defendant was informed and well knew

prior to demanding and receiving the same, and the requirement of payment thereof by the defendant and the receipt thereof were illegal and wrongful; that thereafter, and prior to the commencement of this action, the plaintiff duly made and filed with the defendant its claim for the refunding of said payment and a demand for the refundment thereof, which claim and demand were rejected and refused: there is now due and owing to the plaintiff from and by the defendant the sum of $264.65, with interest thereon at the rate of six per centum per annum from February 28, 1913.

15. This cause arises under the laws of the United States providing for internal revenue and this court has jurisdiction thereof.

Wherefore, plaintiff demands judgment against the defendant for the sum of eight hundred and nine dollars and fifty-four cents ($809.54), with interest thereon at the rate of six per centum per annum from February 28, 1913, together with its costs and disbursements herein.

FRED B. SNYDER,
EDWARD C. GALE,
Attorneys for Plaintiff,
810 Security Bank Building,
Minneapolis, Minnesota.

John R. Van Derlip, of Counsel.

25 Exhibit "A"

Articles of Incorporation of
Sutton Land Company.

We, the undersigned, for the purpose of forming a corporation under and pursuant to the provision of Title 2 of Chapter 34, General Statutes of Minnesota 1894, and the acts amendatory thereof, do hereby associate ourselves as a body corporate, and do hereby adopt the following Articles of Incorporation.

Article I.

The name of this corporation shall be the "Sutton Land Company."

The general nature of its business shall be the buying, owning, exploring and developing, leasing, improving, selling and dealing in, lands, tenements and hereditaments and the doing of all things necessary or incidental to the things above specified.

The principal place of transacting said business shall be at the city of Minneapolis in Hennepin County, Minnesota.

Article II.

The time for the commencement of this corporation shall be the twentieth day of February, A. D. 1906, and the period of continuance of this corporation shall be thirty (30) years.

Article III.

The amount of the capital stock of this corporation shall be One Hundred and Eight Thousand Dollars ($108,000), which shall be paid in, in money or property, in such manner and at such times as the Board of Directors may from time to time direct.

Article IV.

The highest amount of indebtedness or liability to which this corporation shall at any time be subject shall be the sum of One-Hundred Thousand Dollars ($100,000).

Article V.

The names and places of residence of the persons forming this association for incorporation, shall be John M. Longyear of Marquette County, Michigan, Russell M. Bennett of Deephaven, Minnesota, Alfred F. Pillsbury, Fred B. Snyder and Carleton C. Pillsbury, all of Minneapolis, Minnesota.

Article VI.

The names of the first Board of Directors of said corporation are John M. Longyear, Russell M. Bennett, Edmund J. Longyear, Norman C. Richardson, Helen H. Bennett, Alfred F. Pillsbury, Charles S. Pillsbury, Fred B. Snyder, Carleton C. Pillsbury and Frank H. Carleton. The first president shall be the said John M. Longyear. The first vice-president shall be the said Charles S. Pillsbury. The first secretary and treasurer shall be the said Russell M. Bennett.

The government of this corporation and the management of its affairs shall be vested in a board of ten directors and in a president, vice-president, secretary and treasurer, and such other officers and agents as may be from time to time ap-
26 pointed by the Board of Directors. Said directors and officers above named, shall hold their respective offices until the first Tuesday of December, 1906, at which time, and on every succeeding first Tuesday of December thereafter, a board of ten directors shall be elected by the stockholders of said corporation, at an annual meeting of said stockholders to be held at the office of the corporation in the city of Minneapolis, or such other place as the board of directors may direct. Immediately after the election of the directors, or as soon there-

after as practicable, the directors shall meet and elect from their number or from the stockholders of the corporation, a president, vice-president, secretary and treasurer. Any member of the board of directors or any stockholder of the corporation may fill any two of said offices except that of president and vice-president, which offices shall not be filled by the same person. The directors and officers of this corporation shall hold their respective offices until their successors have been duly elected and shall enter upon the duties. In case of a vacancy in the board of directors on account of death, resignation or removal, a special meeting of the stockholders shall be called within forty-five (45) days thereafter and a new director elected to fill such vacancy in the manner hereinafter provided. In case of a vacancy in the office of president, vice-president, secretary or treasurer, caused by death, resignation or removal, the directors of said corporation, when the board of directors is filled as hereinabove provided, shall fill such vacancy. Regular and special meetings of the directors and stockholders may be held at such times and under such rules as may be prescribed by the by-laws of such corporation, but the first meetings of the Board of Directors and the stockholders of said corporation shall be held at the office of the corporation in the city of Minneapolis, Minnesota, on the second Tuesday of May A. D. 1906, at ten and eleven o'clock in the forenoon, respectively. Any director may be represented at any meeting of the Board of Directors by proxy if the stockholders of this corporation shall authorize such representation by by-law.

Article VII.

The capital stock of this corporation shall be divided into two thousand one hundred and sixty (2,160) shares of Fifty Dollars ($50) each.

Article VIII.

No sale, assignment, transfer, hypothecation, pledge or other disposition of any stock in this corporation, shall be valid or effectual for any purpose, until there has first been endorsed upon the stock certificate to be affected by such sale, assignment, transfer, hypothecation, pledge or other disposition, the approval or consent of a majority of the Board of Directors of such corporation, sitting as a Board, to such sale, assignment, transfer, hypothecation, pledge or other disposition.

Article IX.

No mining lease or any interest therein owned by the corporation, shall ever be hypothecated, sold, assigned or transferred nor shall any real estate or any interest therein owned

by this corporation, ever be mortgaged, sold, conveyed or leased for a period longer than one year, except upon the affirmative vote of the holders of seventy-five per cent (75%) of the shares of the capital stock of the corporation actually issued and outstanding, given at a regular or special meeting of the stockholders.

27 Article X.

The title to the properties belonging to this corporation having been prior to the transfer thereof to the corporation, vested in various persons owning, respectively, different undivided interests therein, and such owners having been, at the time of such transfer to the corporation, divided into two general classes, to-wit: the heirs at law, assigns and devisees of George A. Pillsbury and Margaret S. Pillsbury, his wife, Charles A. Pillsbury and Mary A. Pillsbury, his wife, and John S. Pillsbury, all deceased constituting the class known as "The Pillsbury Heirs", who owned collectively an equal one-half part of all said properties, and Russell M. Bennett and John M. Longyear, constituting the other of said classes, who owned as tenants in common the other undivided one-half of all said properties; and this corporation having been formed, by mutual agreement of all said owners of both classes, for the more convenient handling, improvement, development and disposition of said properties, and it being the desire and intention of all said owners that an equal voice, in all matters relative to said properties, shall remain, and be maintained in the future, in said two classes:

It is hereby established as the perpetual and undeviating rule of this corporation that one-half of the entire board of directors of this corporation shall always be nominated by, and elected to represent, each of said two classes of former owners, so that, as long as the whole number of directors shall be ten, five directors, and five only, shall be chosen by the stockholders of this corporation from the nominees of "The Pillsbury Heirs" constituting one class, and five directors, and five only, shall be chosen by such stockholders from nominees of said Bennett and said Longyear constituting the other class.

In case a vacancy shall occur in said board of directors, such vacancy shall be filled by a nominee of the class by which the director whose retirement caused such vacancy was nominated; and until this article shall be altered or abrogated by the vote of the stockholders of this corporation, as hereinafter provided, the equal division, numerically, of said board of directors shall

be strictly maintained, so that said "Pillsbury Heirs" and their successors in interest shall always be represented upon the board of directors of this corporation by one-half of the full authorized number of directors, and said Bennett and Longyear, and their successors in interest, shall always be [repsesented] upon said Board by one-half of the full authorized number of directors, and no amendment of these Articles of Incorporation shall be made changing the number of Directors, except to an even number.

Article XI.

Article X of these Articles cannot be altered, amended or abrogated except by the vote of ninety (90) per cent of the shares of the capital stock of this corporation actually issued and outstanding, nor can any other Article be altered, amended or abrogated, except by the vote of seventy-five (75) per cent of the shares of the capital stock of this corporation, actually issued and outstanding, the vote in every case to be taken at a regular meeting of the stockholders, or at a special meeting of the stockholders called for that purpose.

Article XII.

Articles VIII and X and XI of these Articles of Incorporation shall be printed in full upon and as a part of every certificate of stock issued by this corporation.

Article XIII.

No by-law of this corporation embodying the provisions of Article X of these Articles of Incorporation shall be altered, amended or abrogated except by the vote of ninety (90)
28 per cent of the shares of the capital stock of this corporation actually issued and outstanding, nor can any other by-law be altered or amended except by the affirmative vote of seventy-five (75) per cent of the capital stock of this corporation, actually issued and outstanding, the vote in every case to be taken at a regular meeting of the stockholders, or at a special meeting of the stockholders called for that purpose.

In Witness Whereof, We have hereunto set our hands and seals this 26th day of January, A. D. 1906.

In Presence of:

J. E. Sherman,
Emily McNulty,
As to John M. Longyear.
Harvey E. Coleman,
Clara B. Martin,
As to all other signers.

(Seal) RUSSELL M. BENNETT.
(Seal) JOHN M. LONGYEAR.
(Seal) ALFRED F. PILLSBURY.
(Seal)* FRED B. SNYDER.
(Seal) CARLETON C. PILLSBURY.

State of Michigan,
County of Marquette—ss.

On this 26th day of January, A. D. 1906, before me, a notary public within and for said County, personally appeared John M. Longyear, to me known to be the person mentioned in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

JAMES E. SHERMAN,
Notary Public, Marquette County, Michigan.

State of Minnesota,
County of Hennepin—ss.

On this 9th day of February, A. D. 1906, before me, a notary public within and for said county, personally appeared Russell M. Bennett, Alfred F. Pillsbury, Fred B. Snyder and Carleton C. Pillsbury, to me known to be the persons mentioned in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

HARVEY E. COLEMAN,
Notary Public, Hennepin County, Minn.

My commission expires May 1st, 1912.

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29 State of Minnesota,
County of Hennepin—ss.

Russell M. Bennett, being first duly sworn upon his oath says that he is the Secretary and Treasurer of Sutton Land Company, plaintiff in the foregoing and within entitled action; that he has heard read the foregoing complaint and that the same is true of his own knowledge, except as to those matters therein stated on information and belief and as to such matters he believed it to be true.

RUSSELL M. BENNETT,

Subscribed and sworn to before me this 14th day of April, A. D. 1913.

(Notarial Seal) EDW. C. GALE,
Notary Public, Hennepin County, Minnesota.

My commission expires March 11th, 1914.

Endorsed: Filed in the District Court on April 15, 1913.

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30 (Complaint of Kearsarge Land Company.)

Kearsarge Land Company, a corporation, Plaintiff,
vs.
Fred Von Baumbach, Collector of Internal Revenue, Defendant.

The plaintiff, complaining of the defendant above named, alleges:

1. The plaintiff is, and since the 20th day of February, 1906, has been, a corporation having a capital stock duly organized and existing under the laws of the state of Minnesota, having its principal office in the city of Minneapolis in said state and during all of said time, has been and is an inhabitant of the District of Minnesota, and of the Fourth Division of said district.

2. The defendant, on the 27th day of February, 1913, and for a long period prior thereto, was, has been since, and now is, the Collector of Internal Revenue of the United States for the District of Minnesota, duly commissioned as such collector pursuant to the laws of the United States, and is an inhabitant of the District of Minnesota and of the Third Division thereof.

3. The plaintiff was organized as a corporation as aforesaid under the laws of the state of Minnesota, by the execution, filing and publication of its Articles of Incorporation, a copy of which, marked Exhibit "A", is hereto attached, and is hereby referred to and made a part of this complaint.

31 The plaintiff was so organized for the primary purposes of receiving, and uniting in one ownership, the title to certain lands, until then held by its numerous stockholders in individual ownership, in proportions varying from one-fourth (¼) to one one-hundred-and-eighth (1/108) thereof, and of liquidating and converting the same into money and distributing the proceeds thereof to said various owners in proportion to their former respective holdings in said lands. After its incorporation as aforesaid, the plaintiff received from its stockholders, and has ever since been the owner of, the said lands, subject to the rights of the vendees of the iron ore therein, as hereinafter alleged. The plaintiff corporation was not organized for profit, or with a view to carrying on or doing business; and, at no time since its organization as aforesaid, has the plaintiff carried on or done business of any kind, either for profit or otherwise; and the plaintiff is not, and never has been, a corporation subject to assessment for, or liable to pay to the United States, a special excise tax under the Act of Congress of August 5, 1909, or any other law.

4. At the time of the incorporation of the plaintiff, the only substantial value in its said lands consisted in deposits of iron ore thereon and no substantial value therein has since developed or now exists. Prior to the incorporation of plaintiff, the iron ore upon portions of said land had been sold by the individual owners thereof, at and for a fixed and stated price per ton, and said lands were conveyed to and acquired by the plaintiff subject to the contracts of such sales, and no other sales of any ore thereon have been made. The income of the plaintiff during the years 1909, 1910 and 1911 was derived almost exclusively from payments made under said contracts of
32 sale of iron ore, and no part of said income was derived from the carrying on or doing of any business.

5. The value of said iron ore so sold as aforesaid was fixed by said contracts, and, irrespective of any fluctuations in the market value thereof in the hands of the vendees of said ore or their successors in interest therein, the value of said ores to the plaintiff is not, and can never be, other or greater than the sum named in its contracts of sale of said ore, and there has been, and can be, no increment in value or any profit as respects the plaintiff in said ores or lands.

6. On the 28th of December, 1909, the plaintiff duly amended its said Articles of Incorporation in the manner provided by the laws of the state of Minnesota, in order more clearly to set forth the original purposes and intentions of the incorporators, so that Article I thereof was changed from the form in which it was originally adopted as set forth in Exhibit "A", and the purposes and powers of the plaintiff were limited, and became as follows, to-wit:

"The general purpose of the corporation is to unite in one ownership the undivided fractional interests of its various stockholders in lands, tenements and hereditaments, and to own such property, and, for the convenience of its stockholders, to receive, and distribute among them, the proceeds of any disposition of such property at such times, in such amounts, and in such manner, as the board of directors may determine."

The purposes and powers of the plaintiff have since been, and now are, restricted by said amendment as aforesaid, and the plaintiff, since the date last named, has not been authorized to carry on or do business within the meaning of said Act of Congress of August 5, 1909.

33 7. After the approval of said Act of August 5, 1909, the defendant, as such collector as aforesaid, transmitted to plaintiff printed forms prepared under the direction of the United States Commissioner of Internal Revenue for the mak-

ing of a return by plaintiff of its income for the year 1909, as required by said Act. Plaintiff forthwith notified the defendant that it was not, and during the year 1909 had not been, carrying on or doing any business; that it had derived no income whatsoever from carrying on or doing buiness during said year; that it was not a corporation organized for profit, and was not subject to the provisions of said Act of August 5th, and was not liable to pay the excise tax therein provided for.

Thereafter, during a long period, correspondence and negotiations relative to the liability of plaintiff to make return of income under said Act of August 5th was conducted between the plaintiff and the defendant acting under the instructions of the United States Commissioner of Internal Revenue, which correspondence and negotiations were finally concluded in the month of September, 1912, by the decision of said Commissioner that the plaintiff was subject to the provisions of said Act of August 5, 1909, and liable to pay the excise tax provided for by said Act. Awaiting such decision, and solely by reason of the delay of said Commissioner in arriving at and announcing the same, plaintiff refrained from preparing and filing its returns of income required by said Act until the dates hereinafter mentioned.

8. On or about the 26th day of September, 1912, in pursuance of said decision of said Commissioner, the defendant, as such collector as aforesaid, demanded of the plaintiff the making and filing by it, in the office of said collector, of a return, in the form prescribed by the Commissioner, of the net in-
34 come of the plaintiff for the years 1910 and 1911, and threatened the plaintiff with the imposition of the penalties prescribed by said Act of Congress of August 5, 1909, in case of non-compliance with said demand. Pursuant thereto, but under protest, nevertheless, that it did not come within the purview of said Act of Congress, that it was not a corporation organized for profit, and that it was not carrying on or doing business during said years, and moved thereto solely by the threat of said penalties, and under the duress thereof, the plaintiff, on or about the 23rd day of October, 1912, filed with the defendant true and accurate returns of its income for said years of 1910 and 1911, respectively. During each of said years there had occurred an actual depreciation in value of the property and capital assets of the plaintiff, and each of said returns showed such depreciation of the property of the plaintiff during the year therein referred to, and other deductions as authorized by the law, in an aggregate amount in excess of the gross income of the plaintiff for such year.

9. Thereafter, on or about December 20, 1912, the defendant, as such collector, in like manner as aforesaid, and with a similar threat of the imposition of the penalties of said Act of Congress in case of non-compliance by plaintiff with said demand, demanded from, and required of, plaintiff that it make and file with the defendant, as such collector, a return of its income for the year 1909. Pursuant thereto, the plaintiff made and filed with the defendant, in the manner required by law, on or about January 14, 1913, a return of its income for said year 1909, which showed a depreciation in the property and capital assets of the plaintiff, and other deductions authorized by law, in an amount in excess of the gross income of the plaintiff for said year. Said depreciation actually oc-
35 curred and said other deductions were actually paid out by plaintiff during said year. Said return was so made and filed under protest, however, that plaintiff was not a corporation organized for profit, that it was not carrying on or doing business during said year 1909 ,and that it was not a corporation falling within the purview of said Act of Congress.

10. Notwithstanding the exemption of plaintiff from liability to pay any excise tax under said Act of Congress, and notwithstanding the depreciation in the value of its property and the deductions allowed by law during each of said years, the Commissioner of Internal Revenue of the United States assessed against the plaintiff a tax amounting to $1053.11, as a corporation tax for the year 1909 under the internal revenue laws of the United States, and, in addition thereto, as a penalty for the alleged wrongful delay of the plaintiff in making and filing its return for said year, the sum of $526.56, making a total of $1579.67; and said commissioner assessed against the plaintiff, for the year 1910, under said laws, a tax of $1184.58, and, in addition thereto, as a penalty for the alleged wrongful delay of the plaintiff in making and filing its return for said year, the sum of $592.29, making a total of $1776.87; and for the year 1911, said commissioner assessed a similar tax under said laws in the sum of $1342.97, and, in addition thereto, as a penalty for the alleged wrongful delay of plaintiff in making and filing its return for said year, the sum of $671.49, making a total of $2014.46.

On the 25th of January, 1913, the defendant, as such collector as aforesaid, notified the plaintiff of each of such assessments and demanded payment of said sums on or before the 6th day of February, 1913, and threatened, unless
36 said sums were paid on or before said last named date, to collect the same by distraint and sale of plaintiff's

property, together with the penalties and interest in such case collectible under said law.

11. After the making of said demands by the defendant, the plaintiff duly made and filed with the defendant, in the form and manner provided by the law and in accordance with the practice in such case prescribed, a claim for abatement of said taxes so assessed by said commissioner for each of said years, upon the grounds that the plaintiff was not subject to such tax and that the same was illegally assessed. Said claims were duly received and considered by said commissioner, and, on the 15th day of February, 1913, were, and each of them was, rejected. Thereafter, on the 18th day of February, 1913, the defendant, as such collector as aforesaid, demanded from plaintiff the payment of said tax for each of said years on or before ten days, and threatened, in case of non-compliance therewith, to proceed to collect the same by distraint and sale of plaintiff's property, with penalties and interest as specified in the law.

12. For its first cause of action, the plaintiff further alleges that, pursuant to the demand therefor, and moved thereto by said threat of the defendant, and under the duress thereof, it paid to the defendant, on or about the 28th day of February, 1913, for and on account of said tax for the year 1909 and the addition thereto, the sum of $1579.67; that plaintiff had no net income during said year, and that said tax was illegally assessed and unauthorized by law, for the reasons hereinbefore stated, as defendant was informed and well knew prior to demanding and receiving the same; and the requirement of payment thereof by the defendant and the receipt thereof by him were illegal and wrongful; that thereafter, and
37 prior to the commencement of this action, the plaintiff duly made and filed with the defendant its claim for the refunding of said payment and a demand for the refundment thereof, which claim and demand were rejected and refused; there is now due and owing to the plaintiff, from and by the defendant, the sum of $1579.67, with interest thereon at the rate of six per centum per annum from February 28, 1913.

13. For its second cause of action herein, the plaintiff hereby refers to and re-alleges each and every of the foregoing paragraphs numbered 1 to 11, both inclusive, and further alleges that, pursuant to the demand therefor, and moved thereto by said threat of the defendant, and under the duress thereof, it paid to the defendant, on or about the 28th day

of February, 1913, for and on account of said tax for the year 1910 and the addition thereto, the sum of $1776.87; that plaintiff had no net income during said year, and that said tax was illegally assessed and unauthorized by law, for the reasons hereinbefore stated, as defendant was informed and well knew prior to demanding and receiving the same, and the requirement of payment thereof by the defendant and the receipt thereof by him were illegal and wrongful; that thereafter, and prior to the commencement of this action, the plaintiff duly made and filed with the defendant its claim for the refunding of said payment and a demand for the refundment thereof, which claim and demand were rejected and refused; there is now due and owing to the plaintiff, from and by the defendant, the sum of $1776.87, with interest thereon at the rate of six per centum per annum from February 28, 1913.

14. For its third cause of action herein, the plaintiff hereby refers to and re-alleges each and every of the foregoing paragraphs numbered 1 to 11, both inclusive, and further
38 alleges that, pursuant to the demand therefor and moved thereto by said threat of the defendant, and under the duress thereof, it paid to the defendant, on or about the 28th day of February, 1913, for and on account of said tax for the year 1911 and the addition thereto, the sum of $2014.46; that plaintiff had no net income during said year, and that said tax was illegally assessed and unauthorized by law, for the reasons hereinbefore stated, as defendant was informed and well knew prior to demanding and receiving the same, and the requirement of payment thereof by the defendant and the receipt thereof were illgal and wrongful; that thereafter, and prior to the commencement of this action, the plaintiff duly made and filed with the defendant its claim for the refunding of said payment and a demand for the refundment thereof, which claim and demand were rejected and refused; there is now due and owing to the plaintiff from and by the defendant the sum of $2014.46, with interest thereon at the rate of six per centum per annum from February 28, 1913.

15. This case arises under the laws of the United States providing for internal revenue and this court has jurisdiction thereof.

Wherefore, plaintiff demands judgment against the defendant for the sum of five thousand three hundred and seventy-one dollars ($5371.00), with interest thereon at the rate of

six per centum per annum from February 28, 1913, together with its costs and disbursements herein.

FRED B. SNYDER,
EDWARD C. GALE,
Attorneys for plaintiff.
810 Security Bank Building,
Minneapolis, Minn.

John R. Van Derlip,
of Counsel.

Exhibit "A."

39 Articles of Incorporation
of
Kearsarge Land Company

We, the undersigned, for the purpose of forming a corporation under and pursuant to the provisions of Title 2 of Chapter 34, general statutes of Minnesota, 1894, and the acts amendatory thereof, do hereby associate ourselves as a body corporate, and do hereby adopt the following articles of incorporation:

Article I.

The name of this corporation shall be the "Kearsarge Land Company."

The general nature of its business shall be the buying, owning, exploring and developing, leasing, improving, selling and dealing in lands, tenements and hereditaments, and the doing of all things necessary or incidental to the things above specified.

The principal place of transacting said business shall be at the city of Minneapolis, in Hennepin County, Minnesota.

Article II.

The time for the commencement of this corporation shall be the twentieth day of February, A. D. 1906, and the period of continuance of this corporation shall be thirty (30) years.

Article III.

The amount of the capital stock of this corporation shall be One Hundred and Eight Thousand Dollars ($108,000), which shall be paid in in money or property in such manner and at such times as the board of directors may from time to time direct.

Article IV.

The highest amount of indebtedness or liability to which this corporation shall at any time be subject shall be the sum of One Hundred Thousand Dollars ($100,000).

Article V.

The names and places of residence of the persons forming this association for incorporation shall be John M. Longyear of Marquette county, Michigan; Russell M. Bennett of Deephaven, Minnesota; Alfred F. Pillsbury, Edward C. Gale and Carleton C. Pillsbury, all of Minneapolis, Minnesota.

Article VI.

The names of the first board of directors of said corporation are John M. Longyear, Russell M. Bennett, Edmund J. Longyear, Norman C. Richardson, Helen H. Bennett, Alfred F. Pillsbury, Charles S. Pillsbury, Edward C. Gale, Carleton C. Pillsbury, and Frank H. Carleton. The first president shall be the said Alfred F. Pillsbury. The first vice president shall be the said Frank H. Carleton. The first secretary and treasurer shall be the said Russell M. Bennett.

The government of this corporation and the management of its affairs shall be vested in a board of ten directors and in a president, vice president, secretary and treasurer, and such other officers and agents as may be from time to time appointed by the board of directors. Said directors and officers above-named shall hold their respective offices until the first Tuesday of December, 1906, at which time, and on every succeeding first Tuesday of December thereafter, a board of ten directors shall be elected by the stockholders of said corporation at an annual meeting of said stockholders to be held at the office of the corporation in the city of Minneapolis, or such other place as the board of directors may direct. Immediately after the election of the directors, or as soon thereafter as practicable, the directors shall meet and elect from their number or from the stockholders of the corporation, a president, vice president, secretary and treasurer. Any member of the board of directors or any stockholder of the corporation may fill any two of said offices except that of president and vice president, which offices shall not be filled by the same person. The directors and officers of this corporation shall hold their respective offices until their successors have been duly elected and shall enter upon their duties. In case of a vacancy in the board of directors on account of death, resignation or removal, a special meeting of the stockholders shall be called within forty-five (45) days thereafter and a new director elected to fill such vacancy in the manner hereinafter provided. In case of a vacancy in the office of the president, vice president, secretary or treasurer, caused by death, resignation or removal, the directors of said corporation, when the board of directors is filled as hereinabove provided, shall fill such vacancy. Regular and special meetings of the directors and stockholders may

be held at such times and under such rules as may be prescribed by the by-laws of such corporation, but the first meetings of the board of directors and the stockholders of said corporation shall be held at the office of the corporation in the city of Minneapolis, Minnesota, on the second Tuesday of May, A. D. 1906, at ten and eleven o'clock in the forenoon, respectively. Any director may be represented at any meeting of the board of directors by proxy if the stockholders of this corporation shall authorize such representation by by-law.

Article VII.

The capital stock of this corporation shall be divided into two thousand one hundred and sixty (2,160) shares of Fifty Dollars ($50) each.

Article VIII.

No sale, assignment, transfer, hypothecation, pledge or other disposition of any stock in this corporation, shall be valid or effectual for any purpose, until there has first been endorsed upon the stock certificate to be affected by such sale, assignment, transfer, hypothecation, pledge or other disposition, the approval or consent of a majority of the Board of Directors of such corporation, sitting as a board, to such sale, assignment, transfer, hypothecation, pledge or other disposition.

Article IX.

No mining lease or any interest therein owned by the corporation, shall ever be hypothecated, sold, assigned or transferred, nor shall any real estate or any interest therein owned by the corporation, ever be mortgaged, sold, conveyed or leased for a period longer than one year except upon the affirmative vote of the holders of seventy-five per cent (75 per cent) of the shares of the capital stock of the corporation actu-
41 ally issued and outstanding, given at a regular or special meeting of the stockholders.

Article X.

The title to the properties belonging to this corporation having been, prior to the transfer thereof to the corporation, vested in various persons owning, respectively, different undivided interests therein, and such owners having been, at the time of such transfer to the corporation, divided into two general classes, to-wit: the heirs at law, assigns, and devisees of George A. Pillsbuty and Margaret S. Pillsbury, his wife, Charles A. Pillsbury and Mary A. Pillsbury, his wife, and John S. Pillsbury, all deceased, constituting the class known as "The Pills-

bury Heirs," who owned collectively an equal one-half part of all said properties, and Russell M. Bennett and John M. Longyear, constituting the other of said classes, who owned as tenants in common the other undivided one-half of all said properties; and this corporation having been formed, by mutual agreement of all said owners of both classes, for the more convenient handling, improvement, development, and disposition of said properties, and it being the desire and intention of all said owners that an equal voice, in all matters relative to said properties, shall remain, and be maintained in the future, in said two classes:

It is hereby established as the perpetual and undeviating rule of this corporation that one-half of the entire board of directors of this corporation shall always be nominated by, and elected to represent, each of said two classes of former owners, so that as long as the whole number of directors shall be ten, five directors, and five only, shall be chosen by the stockholders of this corporation from the nominees of "The Pillsbury Heirs" constituting one class, and five directors and five only, shall be chosen by such stockholders from nominees of said Bennett and said Longyear constituting the other class.

In case a vacancy shall occur in said board of directors, such vacancy shall be [fil-ed] by a nominee of the class by which the director whose retirement caused such vacancy was nominated; and until this article shall be altered or abrogated by the vote of the stockholders of this corporation, as hereinafter provided, the equal division, numerically, of said board of directors shall be strictly maintained, so that said "Pillsbury Heirs" and their successors in interest shall always be represented upon the board of directors of this corporation by one-half of the full authorized number of directors, and said Bennett and Longyear, and their successors in interest, shall always be represented upon said Board by one-half of the full authorized number of directors and no amendment of these Articles of Incorporation shall be made changing the number of Directors, except to an even number.

Article XI.

Article X of these Articles cannot be altered, amended or abrogated except by the vote of ninety (90) per cent of the shares of the capital stock of this corporation actually issued and outstanding, nor can any other Article be altered, amended or abrogated except by the vote of seventy-five (75) per cent of the shares of the capital stock of this corporation, actually issued and outstanding, the vote in every case to be taken at a regular meeting of the stockholders, or at a special meeting of the stockholders called for that purpose.

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Article XII.

Article VIII and X and XI of these Articles of Incorporation shall be printed in full upon and as a part of every certificate of stock issued by this corporation.

Article XIII.

No by-law of this corporation embodying the provisions of Article X of these Articles of Incorporation shall be altered, amended or abrogated except by the vote of ninety (90) per cent of the shares of the capital stock of this corporation actually issued and outstanding, nor can any other by-law be altered or amended except by the affirmative vote of seventy-five (75) per cent of the capital stock of this corporation, actually issued and outstanding, the vote in every case to be taken at a regular meeting of the stockholders, or at a special meeting of the stockholders called for that purpose.

In witness whereof, we have hereunto set our hands and seals this 26th day of January, A. D. 1906.

In Presence of:
J. E. Sherman,
Emily McNulty,
As to John M. Longyear.

Harvey E. Coleman,
Clara B. Martin,
As to all other signers.

(Seal) RUSSELL M. BENNETT,
(Seal) JOHN M. LONGYEAR,
(Seal) ALFRED F. PILLSBURY,
(Seal) EDWARD C. GALE,
(Seal) CARLETON C. PILLSBURY,

State of Michigan,
County of Marquette—ss.

On this 26th day of January, A. D. 1906, before me, a notary public within and for said county, personally appeared John M. Longyear, to me known to be the person mentioned in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

(Notarial Seal) JAMES E. SHERMAN,
Notary Public, Marquette County, Mich.

State of Minnesota,
County of Hennepin—ss.

On this 9th day of February, A. D. 1906, before me, a notary public within and for said county, personally appeared Russell M. Bennett, Alfred E. Pillsbury, Edward C. Gale and Carleton C. Pillsbury, to me known to be the persons mentioned in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

(Notarial Seal) HARVEY E. COLEMAN,
Notary Public, Hennepin County, Minn.

My commission expires May 1st, 1912.

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43 State of Minnesota,
County of Hennepin—ss.

Russell M. Bennett being first duly sworn upon his oath says that he is the Secretary and Treasurer of Kearsarge Land Company, plaintiff in the foregoing and within entitled action; that he has heard read the foregoing complaint and that the same is true of his own knowledge, except as to those matters therein stated on information and belief and as to such matters he believes it to be true.

RUSSELL M. BENNETT.

Subscribed and sworn to before me this 14th day of April, A. D. 1913.

(Notarial Seal) EDW. C. GALE,
Notary Public, Hennepin County, Minnesota.

My Commission expires March 11th, 1914.

Endorsed: Filed in the District Court on April 15, 1913.

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44 (Amended Answer to Complaint of Sargent Land Co.)

Sargent Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

The defendant, for his answer to the complaint in the action above entitled, admits the allegations contained in Paragraphs one, two and the first four lines of Paragraph three, ending with the word "complaint".

Further answering, the defendant admits that the Commissioner of Internal Revenue, pursuant to the Act of Congress of August 5, 1909, assessed against the plaintiff taxes and penalties in the amounts and for the years as in plaintiff's complaint

alleged, and that the defendant, pursuant to said tax assessment and in manner and form as by law required, as such collector of internal revenue for the State and District of Minnesota, did demand and receive of the plaintiff the several sums in said complaint stated as and for the taxes theretofore assessed by the Commissioner of Internal Revenue under the Act aforesaid.

Further answering said complaint, defendant denies each and every allegation, matter and thing therein contained, save and except as the allegations of said complaint are herein admitted.

CHARLES C. HOUPT,
United States Attorney and
attorney for defendant.

State of Minnesota,
County of Ramsey—ss.

Charles C. Houpt, being first duly sworn, deposes and says that he is United States Attorney in and for the District of Minnesota, and Attorney for defendant in the above entitled action; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on information and belief and as to such matters he believes it to be true; that he makes this affidavit for the reason that plaintiff in said action is absent from the county wherein affiant resides.

CHARLES C. HOUPT,

Subscribed and sworn to before me this 22nd day of September, A. D. 1913.

(Seal)

NORBERT B. TYRRELL,
Notary Public, Ramsey County, Minn.

My Commission expires Oct. 5, 1917.

Endorsed: Filed in the District Court on Sept. 23, 1913.

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45 (Amended Answer to Complaint of Sutton Land Co.)

Sutton Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

The defendant, for his answer to the complaint in the action above entitled, admits the allegations contained in Paragraphs one, two and the first four lines of Paragraph three, ending with the word "complaint".

Further answering, the defendant admits that the Commissioner of Internal Revenue, pursuant to the Act of Congress of August 5, 1909, assessed against the plaintiff taxes and penalties in the amounts and for the years as in plaintiff's complaint alleged, and that the defendant, pursuant to said tax assessment and in manner and form as by law required, as such collector of internal revenue for the State and District of Minnesota, did demand and receive of the plaintiff the several sums in said complaint stated as and for the taxes theretofore assessed by the Commissioner of Internal Revenue under the Act aforesaid.

Further answering said complaint, defendant denies each and every allegation, matter and thing therein contained, save and except as the allegations of said complaint are herein admitted.

CHARLES C. HOUPT,
United States Attorney and
attorney for defendant

State of Minnesota,
County of Ramsey—ss.

Charles C. Houpt, being first duly sworn, deposes and says that he is United States Attorney in and for the District of Minnesota, and Attorney for defendant in the above entitled action; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on information and belief and as to such matters he believes it to be true; that he makes this affidavit for the reason that plaintiff in said action is absent from the county wherein affiant resides.

CHARLES C. HOUPT,

Subscribed and sworn to before me this 22nd day of September, A. D. 1913.

(Seal) NORBERT B. TYRRELL,
Notary Public, Ramsey County, Minn.

My Commission expires Oct. 5, 1917.

Endorsed: Filed in the District Court on Sept. 23, 1913.

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46 (Amended Answer to Complaint of Kearsarge Land Co.)

Kearsarge Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

The defendant, for his answer to the complaint in the action above entitled, admits the allegations contained in Paragraphs

one, two and the first four lines of Paragraph three, ending with the word "complaint."

Further answering, the defendant admits that the Commissioner of Internal Revenue, pursuant to theAct of Congress of August 5, 1909, assessed against the plaintiff taxes and penalties in the amounts and for the years as in plaintiff's complaint alleged, and that the defendant, pursuant to said tax assessment and in manner and form as by law required, as such collector of internal revenue for the State and District of Minnesota, did demand and receive of the plaintiff the several sums in said complaint stated as and for the taxes theretofore assessed by the Commissioner of Internal Revenue under the Act aforesaid,

Further answering said complaint, defendant denies each and every allegation, matter and thing therein contained, save and except as the allegations of said complaint are herein admitted.

CHARLES C. HOUPT,
United States Attorney and attorney for defendant.

State of Minnesota,
County of Ramsey—ss.

Charles C. Houpt, being first duly sworn, deposes and says that he is United States Attorney in and for the District of Minnesota, and Attorney for defendant in the above entitled action; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on information and belief and as to such matters he believes it to be true; that he makes this affidavit for the reason that plaintiff in said action is absent from the county wherein affiant resides.

CHARLES C. HOUPT.

Subscribed and sworn to before me this 22nd day of September, A. D. 1913.

(Seal) NORBERT B. TYRRELL,
Notary Public, Ramsey County, Minn.

My Commission expires Oct. 5, 1917.

Endorsed: Filed in the District Court on Sept. 23, 1913.

48 (Judgment in favor of Sargent Land Co.)

Sargent Land Company, a Corporation, Plaintiff,

vs.

Fred von Baumbach, Collector of Internal Revenue, Defendant.

This case came on to be heard before the Court, a trial by jury therein having been duly waived in writing by the parties thereto, on the 29th, 30th and 31st days of July, 1913.

Mr. Van Derlip and Mr. Snyder appeared for the plaintiff.

Mr. Houpt, U. S. District Attorney, appeared for the defendant.

After hearing the evidence offered by the respective parties and the arguments of counsel thereon, I now make a general finding in favor of the plaintiff, and it is therefore now Ordered that the plaintiff recover of the defendant the sum of Seventeen thousand, one hundred and forty, 71/100ths dollars, ($17,140.71), with interest thereon at the rate of six percent per annum from February 28th, 1913, and its costs.

Dated August 5th, 1913.

CHARLES A. WILLARD,
Judge.

Endorsed: Filed in the District Court on Aug. 5, 1913.

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49 (Judgment in favor of Sutton Land Co.)

Sutton Land Company, a Corporation, Plaintiff,

vs.

Fred von Baumbach, Collector of Internal Revenue, Defendant.

This case came on to be heard before the Court, a trial by jury therein having been duly waived in writing by the parties thereto, on the 29th, 30th and 31st days of July, 1913.

Mr. Van Derlip and Mr. Snyder appeared for the plaintiff.

Mr. Houpt, U. S. District Attorney, appeared for the defendant.

After hearing the evidence offered by the respective parties and the arguments of counsel thereon, I now make a general finding in favor of the plaintiff, and it is therefore now Ordered that the plaintiff recover of the defendant the sum of Eight hundred and nine, 54/100ths Dollars ($809.54), with interest thereon at the rate of six per cent per annum from February 28th, 1913, and its costs.

Dated August 5th, 1913.

CHARLES A. WILLARD,
Judge.

Endorsed: Filed in the District Court on Aug. 5, 1913.

50 (Judgment in favor of Kearsarge Land Co.)

Kearsarge Land Company, a Corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

This case came on to be heard before the Court, a trial by jury therein having been duly waived in writing by the parties thereto, on the 29th, 30th and 31st days of July, 1913.

Mr. Van Derlip and Mr. Snyder appeared for the plaintiff.

Mr. Houpt, U. S. District Attorney, appeared for the defendant.

After hearing the evidence offered by the respective parties and the arguments of counsel thereon, I now make a general finding in favor of the plaintiff, and it is therefore now Ordered that the plaintiff recover of the defendant the sum of Five thousand three hundred and seventy-one Dollars ($5,371.00), with interest thereon at the rate of six per cent per annum from February 28th, 1913, and its costs.

Dated August 5th, 1913.

CHARLES A. WILLARD,
Judge.

Endorsed: Filed in the District Court on Aug. 5, 1913.

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51 (Stipulation that but one Bill of Exceptions be made and as to use of Record on Writs of Error.)

Sargent Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

Kearsarge Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

Sutton Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

It is hereby stipulated and agreed by and between the parties to the actions above entitled that said actions having been tried together to the court without a jury and a single record made of the evidence introduced by the parties at the trial thereof, that a single bill of exceptions may be made, filed and printed for all the purposes of said cases on writs of error from the Circuit Court of Appeals, Eighth Circuit, and that said record may stand for and be used in the Circuit Court of Appeals,

Eighth Circuit, as and for the record in each of said cases, to the same extent and in like manner as if a separate record had been prepared and printed in each of said cases.

SNYDER & GALE and
JOHN R. VAN DERLIP,
Attorneys for Plaintiffs.

CHARLES C. HOUPT,
United States Attorney and
Attorney for Defendant.

Endorsed: Filed in the District Court on Oct. 6, 1913.

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53 (Bill of Exceptions, filed in the District Court on October 6, 1913.)

These actions came on for trial before Hon. Charles A. Willard, U. S. District Judge without a jury, on the 29th day of July, 1913, in the Federal Building, Minneapolis, Minnesota.

Mr. C. C. Houpt U. S. District Attorney, for defendant.

Messrs. Snyder & Gale and Van Derlip & Lum for the plaintiffs.

54 Counsel for plaintiffs offers and reads in evidence a certain stipulation entered into between the respective parties, which is as follows:

Stipulation combining Actions for Trial.

It Is Hereby Stipulated, that the above entitled actions involving the same state of facts and the same issues, may be tried together and that all the testimony submitted by either party relative to said action shall be considered as submitted in each thereof; provided, however, that if either party shall desire to raise and have determined any issue of fact or of law in any one action which is not also involved in the others, such testimony may be submitted and such issue or issues presented for determination without prejudice by reason of this stipulation.

SNYDER & GALE,
JOHN VAN DERLIP,
Attorneys for Plaintiff.

CHARLES C. HOUPT,
Attorney for Defendant.

Dated, July 29, 1913.

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55 Order that Actions be Tried Together.

Upon reading the foregoing stipulation it is hereby ordered that the actions above entitled be tried together, and that the testimony offered and received on said trial shall be deemed to be offered and received in each of said actions; provided, however, that if any testimony be offered by either party material and relevant to any one or two of said actions, but not to all of them, and if any issue of fact or of law be presented in any one or two of said actions which is not involved in all thereof, such testimony may be received by the Court, and such issues may be considered and determined by the Court, notwithstanding the making of said stipulation and of this order.

CHARLES A. WILLARD,
Judge of the United States District Court for Minnesota.

Dated July 29, 1913.

(Testimony for Plaintiffs.)

The case on the part of the plaintiffs is then opened to the Court by Mr. Van Derlip.

Counsel for plaintiffs then reads to the Court the Articles of Incorporation of one of the plaintiff corporations, stating to the Court that the Articles of Incorporation of each of the plaintiff companies is similar to the one read at this time.

56 FREDERICK B. SNYDER, a witness produced and sworn on the part of the plaintiff, testifies as follows:

Examination in Chief

By Mr. Van Derlip:

Q. You live in Minneapolis? A. I do.

Q. You have lived here a great many years?

A. Fifty years, yes.

Q. Were you acquainted with the members of the firm of John S. Pillsbury & Co.? A. Yes.

Q. John S. Pillsbury, George A. Pillsbury and Charles A. Pillsbury in their life times?

A. I was intimately acquainted with them during their life times, and was for the last forty years.

Q. Were you prior to the time of his death connected by marriage with John S. Pillsbury?

A. I was his son in law.

Q. Were you during the years prior to 1888 more or less familiar with the affairs and property of the firm of John S Pillsbury & Co.?

A. Yes, I was quite familiar with them. A great many matters relating to lands were referred to me by the Pillsburys, I examined a great many titles; I think all of the titles covered by these three corporations, and matters relating to them were constantly referred to me.

Q. Will you be good enough to state, without my asking specific questions, the history of these titles now owned
57 by the Sergeant Land Company, the Kearsage Land Company and the Sutton Land Company, so as to get into the record the chain of title from John S. Pillsbury, George A. Pillsbury and Charles A. Pillsbury.

Mr. Houpt: Of course it would not be competent for this witness to state orally the condition of these titles, that being a matter of record.

The court overrules the objection, and counsel for defendant excepts to the ruling.

A. In the early seventies, the three Pillsburys, the elder George A. Pillsbury, the one we call Governor Pillsbury, being John S. Pillsbury, and Charles A. Pillsbury the son of George A. Pillsbury, were engaged in the land business for the purpose really of carrying on the lumber business. They were engaged in the lumber business, purchasing the lands that became incidental to that business under the name of John S. Pillsbury & Company, each owning a one-third interest in the copartnership. They bought many thousand acres of land in the northern part of the state, land that was valuable then for its timber. As years went by, these lands being especially valuable for their timber, they sold the timber, and in some cases they logged the lands, in other they sold them for manufacturing purposes. But in 1880 the State Geological survey disclosed the Range called the Messaba Range, supposed to contain iron,
which went through the holdings of John S. Pillsbury &
58 Company. In the latter part of 1889 or along in 1890 explorations were conducted along this range, and some ore was disclosed. Among those who were exploring was Mr. J. M. Longyear of Marquette, Michigan, who was engaged in the land business with Mr. Russell M. Bennett who is present here in court. They conceived the idea of exploring this district more extensively, and approached the Pillsburys for an option upon such lands as they might wish to select out of the Pillsbury's holdings, exclusive of the timber, in the northern part of the state, for the purpose of searching for iron. A tentative

agreement was entered into, and a limited time was given for Mr. Bennett and Mr. Longyear to look over the country. They went on and in a few months took an option on it, or took an option upon such lands as they might wish to select out of the Pillsbury's holdings, provided they found iron. They conducted their explorations, and in about 1892, as I recollect it, they made a demand for a deed, selecting the lands now covered by these three corporations, and demanded an undivided interest, as compensation for their exploration expenses for finding iron upon certain lands. A deed was made, so that the holdings in the land or the title to the land was then passed, one quarter to Mr. Bennett, one quarter to Mr. Longyear, and one-sixth to John S. Pillsbury, George A. Pillsbury and Charles A. Pillsbury, one-sixth to each.

59 Q. One-sixth to each? A. Yes, sir.

Q. Making a full title?

A. Yes. That was in 1892. It is, I think common knowledge that the exploration continued upon the range, and that the value of the range as a range became more apparent. Then in 1898 George A. Pillsbury died. He left a will, and generally, by its terms, the widow Margaret S. Pillsbury, took one-third which would be one-eighteenth and his son took an eighteenth.

Mr. Van Derlip: I suppose Mr. Houpt may make objections to this testimony, though I do not suppose there is any question about these matters.

Mr. Houpt: I will waive objection.

Witness: Mr. C. A. Pillsbury under the will took an undivided one-third, which would be one-eighteenth, and the children of the deceased son of George A. Pillsbury, Mr. Fred C. Pillsbury took the other eighteenth under the provision of the will leaving it to certain trustees until they became 25 years of age. So that we then have the title out of George A. Pillsbury, the Governor, still having one-sixth, C. A. Pillsbury having four-eighteenths, and the children of Fred. C. Pillsbury having in trust one-eighteenth, and Margaret S. Pillsbury one-eighteenth. That was in 1898, in 1899 C. A. Pillsbury died, leaving his four-eighteenths to his two sons in equal shares, each two-eighteenths. Then in March, 1901 the widow Margaret S. Pillsbury died. She, having one-eighteenth, left it so far as it

60 then remained in her, and I will explain what I mean by that statement, as far as it remained in her. There were four grandchildren by her son Fred. C. Pillsbury and two grandchildren by her son C. A. Pillsbury, and each had an undivided one-one hundred and eighth, making six-one hundred

and eighths, or one-eighteenth. But before her death she had conveyed her one-eighteenth or 6/108ths in the three properties known as the Monroe mine, the Glen mine and the Parce mine in equal proportions, 3/108ths each, to her daughters Mrs. Townsend and her relative Mr. Frank H. Carleton. That is the difference as far as the Kearsage Land Company is concerned, and that is the only difference. Governor Pillsbury died October 8th, 1901. He left a widow and a son Alfred S. Pillsbury, a daughter Sarah P. Gale, and a grand son John Pillsbury Snyder. He died without a will, so that the widow took one-third of one-sixth, being one-eighteenth, and the children and the grandchild each took one-third of the balance, or four-one hundred and eighths each. I think I omitted to say anything about the one-eighteenth which went to the four children of Fred. C. Pillsbury in trust, Mrs. Ayer, Carleton C. Pillsbury, Alice Pillsbury and Helen Pillsbury. That reduced the division to three-two hundred and sixteenths each, making twelve two hundred and sixteenths, or one-eighteenth. So this title was really divided down to points of two hundred
61 and [sixtten,] as a matter of fact.

You can readily see the complications which faced the parties interested in that title, which they all believed in the future had a large value. Leases were made in 1901 and 1902, if I remember right: the records will show. But several leases were made and they required the obtaining of these signatures; and in addition to that, there is a provision of the law which forbids a guardian from making a lease for more than 25 years, which impairs the value of mining leases, they being usually for 50 years or longer. I wish to have it put upon the record that when I signed one or two of these leases as guardian I had to give a guaranty, in order to have the leases made, that when my son became of age he would confirm the leases for a longer period than 25 years.

Q. You were guardian for your son?

A. I was, and for that reason I could not make a longer lease. There were other minors who were acting through guardians and trustees, and there were younger children who were getting married and were having children of their own. We were stared in the face with possible death of any of the minors for many many years to come. That was a possibility which stared us in the face. Another thing was that some small interest in these properties might get outside of what we considered the family; or some undesirable interest might
62 come in and complicate the title, and might harass and trouble us. So we were confronted with the problem of

in someway merging these properties into a single ownership, with the grave objections before us of having a trustee corporation, or to have the guardians incorporate. We did not want to do it, and yet we felt that we must take the chance. Then about this time there was an opportunity to purchase a forty acres from Mrs. Day, which we thought advisable to protect certain property which we had against an undesirable use of it; so we had negotiations for that Day forty. Then we had negotiations for a lease of a large quantity of this land with Mr. Hill. He wanted a long lease, an indeterminate lease, and he must have it. Their attorney was willing to take a lease from a corporation, with a guaranty that there would be a confirmation of the acts of any one acting as a guardian, at the proper time, as they could not take a valid lease for more than twenty five years from a guardian. So we were compelled by reason of all these things to do something. We decided to incorporate ten thousand acres in round figures, [enought] for three corporations, provided we put the three pieces in which the title differed into a separate corporation, and put the other in two others, making two corporations out of them, so as to cover the rest of the land, and thus bring it within the law. The only reasons we had for making three corporations, out of this property, and not one corporation, was, first,
63 that in three pieces of land the title differed; and the second reason was to comply with the law against corporations holding more than five thousand acres of land. The records will disclose, and there will be presented here evidence to show that each individual entering the corporation received from the corporation a certificate of stock representing exactly his undivided interest in the land taken over by the corporation. They will show and disclose also almost a jealous care taken by both sides of the friendliest nature by Longyear & Bennett on the one hand and the Pillsburys on the other hand, to forever maintain and keep inviolate the rights of all the parties to the one-half of this property, as far as it might be done through the corporation. It discloses the fact that the stockholders on either side can not operate unless a majority of each is present at the meeting; it shows that the directors can not act unless a majority representing each side be [present.] No leases or transfers of property can be made, except by a vote of 75 per cent of the stock.

Mr. Houpt: Are these all set out in the by-laws?

The Court: Perhaps it would be better to introduce them.

Mr. Van Derlip: They will be introduced.

Witness: The stock itself can not be transferred, except at a meeting of the board, by a majority endorsed on the back of the stock at an open meeting.

64 Mr. Houpt: That is objected to.

Mr. Van Derlip: I think this has a bearing upon the question as to what we had in mind when we organized.

The Court: The objection will be sustained.

Witness: The estates conveyed by the individuals to this corporation were only the properties which came through the Pillsburys and the Day forty, and the rights of the leases, all of which we were bound to carry out at the time we incorporated. I think I have substantially covered the history of things and the reasons for the incorporation.

Q. In these negotiations to which you have referred leading up to the organization of this corporation, did you have a part?

A. I did, from the inception.

Q. What interest did you represent?

A. I represented the Pillsbury interest, and also in a general way, I might say, both sides. I think we represented Longyear and Bennett, so we represented both sides.

Q. So that you were familiar with all these facts to which you have referred, and you knew of all the negotiations leading up to the organization of the corporation, and the transfer of this property to that corporation?

A. All I have told is from my personal knowledge.

Q. You were a director in this corporation.

A. I was during the minority of my son. I held one share for that purpose.

65 Q. You represented or held one share?

A. I held one [shore] for that purpose only. I represented my son's interest and the Pillsbury interest.

Q. You were one of the directors, representing the Pillsbury heirs? A. The Pillsbury heirs, yes.

Q. Since that time have you been familiar with the—I mean since your son succeeded you as a director, have you been familiar with all these matters?

A. I have been familiar as an attorney, and also.

Q. Who are the attorneys of record? A. Snyder & Gale.

Q. The Snyder being yourself? A. Yes, sir.

Q. I will ask you, Mr. Snyder the purpose of the organization of this corporation, particularly with respect to the end at which you aimed.

A. The whole purpose of the incorporation was to bring to the heirs [thrier] shares of the estate as fast as possible. This corporation was organized as a vehicle to accomplish that re-

sult, and for no other [pruposes]; to convert the assets into money and to distribute it to the stockholders as we have been doing.

Q. As a matter of fact, since the organization of the corporation what has been done with the money received by it?

A. It has been whenever received distributed to the stockholders in proper proportion, deducting only the necessary expenses of actually carrying on the office force.

[QL.] What has been done by this corporation during the period of [thier] existence, in the way of maintaining
66 separate offices?

A. Their offices have been in connection with the office of Mr. R. M. Bennett in this city. He is engaged in the land and mining business. To save expense, and to be as economical as possible, and to get as large a return as possible to the stockholders, it was arranged that they should be carried on in Mr. Bennett's office, and that a portion of the money paid to his office force should be charged up to these different companies.

Q. They have maintained no other office, except this in connection with Mr. Bennett's office?

A. They have had no other office.

Q. During the period of the existence of these corporations who has been the secretary and treasurer of them?

A. Mr. Russell M. Bennett has been and is secretary and treasurer of these three corporations.

Q. Since the organization of these corporations in 1906, what if any business have they or either of them carried on or been doing?

A. They have carried on and they are carrying on or doing no business other than the disposition of their properties and the distribution of the proceeds to the stockholders.

Q. Has any proportion of the proceeds received from time to time from the disposition of the property been used for any purpose by the corporations, except for distribution to the stockholders? A. None.

Q. I mean of course, except the necessary and inci-
67 dental expenses of the office to which you refer? A. No.

Q. Have all of those proceeds during the time involved in this suit from 1909 to 1911 been distributed as fast as received by the corporations?

A. As fast as received, with the exception of some moneys which have been retained a short [tiem] in connection with the Keewatin property.

Q. State what the Keewatin property is to which you refer.

A. The Keewatin property is a portion of the property of the Sargent Land Company covered by the Van Buren leases.

Q. The Van Buren lease upon its face provided for the payment of certain minimum amounts per year.

Q. I am speaking of the years 1909, 1910 and 1911. Has the company engaged in any transaction by way of investment or otherwise, except such as you have stated in your testimony?

A. None whatever.

Q. In any venture of any sort, with a view of gaining a profit for the [sto-kholders]? A. None whatever.

Q. In my opening statement to the court I referred to leases to the Van Buren Mining Company which you have mentioned, bearing date January 2, 1907; were you familiar with the negotiations leading up to the making of that lease?

A. I was from the inception.

Q. Will you please state when these negotiations, as near as you can recollect, were entered upon, and when they were concluded.

Mr. Houpt: That is objected to as immaterial, as to
68 any negotiations preceding the execution of the lease, because whatever was done prior to that time is merged in the lease.

The Court overrules the objection, and counsel for defendant excepts to the ruling.

A. To the best of my recollection, the first intimation of the negotiation was in December, 1905, just before the first of the year; or it might have been after that a little, it may have been immediately after the first of January, 1906. It was close to the beginning of the year 1906.

Q. When were those negotiations concluded, as respects the agreement that such a lease should be given?

Mr. Houpt: Was the agreement in writing?

Witness: I couldn't state as to that.

Mr. Houpt: I object, if it was not in writing, because a verbal lease would be void through these negotiations, if the agreement was stipulated to by word of mouth.

A. To the best of my recollection now, the terms of the lease were substantially agreed to along in the early summer of 1906.

Q. I stated to the court that my understanding was that those negotiations were concluded prior to the filing of these articles. That was my understanding. May be I am mistaken.

A. My own recollection is that that would not be quite correct, but substantially they were agreed to prior to that
69 time. But, it seems to me it was some time since then, I wouldn't like to say they were definitely agreed upon, but they were substantially agreed to by the middle of the summer of 1906.

Q. I believe you testified that one condition of these negotiations was that a corporation should be organized which could give a proper lease of this property.

A. That was one of the requirements.

Q. Since that time have any of these corporations executed mining leases, or have any mining leases been executed by any or either of [th-se] corporations? A. None.

The Court: That is the only lease that they made?

Witness: That is the only lease that any of these companies made.

Q. At the time of the organization of these corporations in 1906 in what did the value of the lands conveyed to the corporations consist?

A. The value consisted entirely in what might be under the surface, and not above it. The title which Messrs. Longyear & Bennett had in their half did not cover any timber. The timber at the time of the incorporation had been stripped from the land. They were deemed to be, most of the land, save and except this in the Sutton Company, valuable only for iron, and no value in addition to that has accrued to them since.

Q. Had the land at that time any appreciable surface value for agricultural or other purposes?

70 A. Most of them have not. A large portion of them, in fact most of them are covered with boulders and drift; that is, the larger portion of them.

Q. After the organization of these corporations I believe you said that the lands were conveyed to these corporations by these various heirs. Is it true that after the arrival of these heirs at their majority, or when they were out from under the tutelage of the court, they gave their confirmatory individual deeds?

A. They are all of age now. They did all confirm to the corporations their deeds.

Cross-Examination

By Mr. Houpt:

Q. I understood you to say that Snyder & Gale have been the attorneys of these three corporations during that entire period. A. Yes, sir.

Q. Do you receive a regular salary as attorneys for the corporations?

A. For the years I think ever since the inception of the companies, we have received a salary of $250 each from each company to cover our office work, or ordinary work, but not any extraordinary work that might come up.

Q. On that outside of routine work, you were paid special fees for. A. Yes.

Q. I understood you to say that you participated in the organization [you-self] of the corporations? A. Yes.

Q. The organization of these corporations was deemed
71 to be of a good deal of value and importance to the holders of this property.

A. I think that under my statement it is apparent that we had to have something that—

Q. It was deemed of importance?

A. It was certainly deemed of importance.

Q. Both important in handling the property with more expedition, and with more harmony, and also in making leases of the property.

A. If anything would require signatures.

Q. You couldnt deed any of this property without signatures? A. No.

Q. It was also of importance in the execution of mining leases? A. Yes.

Q. You could make a better lease? A. Yes.

Q. That is, you could make a better lease through a corporation than you could by the individuals, so long as some of the individuals were minors, the individual holders?

A. I [wouldn-'] say that you could make a better lease, because in each case when it came to the giving of guarantees the lease went through.

Q. Did you not state that under the laws of Minnesota, when the property of a minor was involved, you were restricted to making a lease not exceeding 25 years?

A. Yes, and I also stated that when the question came up of giving a guaranty, that the lease went through, and that they subsequently obtained a confirmation of the lease.

Q. Was there not some difficulty in giving a lease to
72 the Great Northern?

A. They wished a corporation lease, undoubtedly, as I said before.

Q. So that the object of the incorporation was because there were certain things of importance and of value to these property holders in the corporate form?

A. I will stand on my general statement of why they were incorporated, as given in my direct examination.

Q. How many leases are there outstanding?

A. There is the Monroe lease, the Glen lease covered by the Kearsage Company. There is also what we call the two Adams Leases in the Sutton Company. The Little Pearce was in the Kearsage Company also, but that is worked out. That is not outstanding, it is worked out. There are two Adams leases in the Sutton, and then there is the Longyear lease and the Little Chemung lease. There is the St. Paul lease, that is covered by the Sargent in addition to the Van Buren. There is also the Sargent Company. The Little Alexander mining lease, I think that was worked out before the incorporation, if it was not in the Sargent.

Q. I only intended to direct your attention to the leases in life. A. Yes.

Q. Then in the Sargent company there was the St. Paul mining lease and the Van Buren which are in existence?

A. Yes.

Q. Under which you are operating?

A. Yes, sir. There was the Big Chemung, the Little Chemung, but the Chemung is the name of the mine from
73 which we are receiving revenue.

Q. Is ore being extracted from the Monroe lease?

A. Yes, sir.

Q. And from the Glen lease?

A. There has been a large amount, but very little at the present time.

Q. From the two Adams leases? A. None.

Q. None [frome then] two Adams leases? A. No.

Q. You have received advance payments on them?

A. Yes.

Q. But none of the ore has been removed?

A. No ore has been taken out.

Q. The Longyear lease, how about that?

A. There has been some ore taken out, but nothing this year, I believe.

Q. Have you received advance payments on the Longyear mine? A. Yes, sir, in the past.

Q. How about the Chemung lease? A. There is no ore being mined.

Q. Has there been any ore mined? A. No.

Q. How is the St. Paul lease?

A. There has been ore taken out underground, and stripping ready to take ore out. Open pit.

Q. But ore has not yet been mined?

A. Yes, ore has been mined underground.

Q. Have you received advance payments on that ore?

A. Yes.

Q. The Van Buren leases, how is it as to them?

A. Advance payments. No ore mined.

Q. Do your records show the amounts of money paid on each one of these leases? A. They do.

74 Q. Since 1909? A. Yes.

Q. Do your records also show the proportional amounts paid on advance payments, and also for ore mined? A. Yes.

Q. Of course you can't state these amounts?

A. No, I can't state them but Mr. Bennett can state them. He is familiar with the books.

Q. It was stated here that [that] you bought 40 acres of land which was designated as the Day 40. A. Yes, sir.

Q. This tract of land or a portion of it was platted as a town site. A. Never platted.

Q. It was not platted? A. Never platted.

Q. No portion of it? A. No.

Q. You have platted though a portion of this land as an addition to Hibbing. .

A. No, that was platted years ago by the Pillsburys. Pillsbury's First Addition to Hibbing was platted. When we took the property over into the corporation these lots went into the corporation.

Q. Was there not a Second Addition to Hibbing platted?

A. No.

Q. In other words, there has been no land platted then by either of these corporations?

A. The Sargent Company, I can't tell. Mr. Bennett can tell better than I can. We have a Keewatin plat in the Sargent Company, but whether that was platted before the incorporation, or just after, I can't say.

Q. The Secretary's books will show that?

A. Yes, sir, the secretary's books will show that.

Q. These lands were all divided into 40 acre tracts.

75 A. Government subdivisions, whatever they have been.

Q. Were they not handled and listed by the Pillsburys, and since [since] by the corporation in 40 acre tracts?

A. I think they are carried on their books in that way.

Q. So there were ten thousand acres, or about ten thousand acres included in these three corporations?

A. Yes, about that.

Q. And that would mean about 250 forty acre tracts, would it not? A. About that.

Q. Are you able to state the number of tracts embraced by each corporation?

A. I am not. But the records and books disclose all the resolutions accurately. The resolutions can be offered.

Q. Do you know of any of the 40 acre tracts that are included in the Sargent Land Company that revealed iron at the time of the incorporation?

A. No. I cannot answer that.

Q. That information then would be more accurately obtained from Mr. Bennett.

A. I think he can give it to you more accurately than I can.

Q. Have explorations for iron been continued since the incorporation? A. Yes.

Q. Have such explorations been prosecuted since the years 1909, 1910 and 1911? A. By the lessees, Yes.

Q. By the lessees? A. Yes.

Q. But none by the corporations? A. No.

76 Q. Are all the lands leased?

A. No, not quite all. They did not select all. But we have not conducted explorations since. Whatever exploration has been done has been done by the lessees, the Great [W-stern] Mining Company.

Q. Then there are some lands held by the Sargent Land Company that have not been explored? A. Yes.

Q. Does the same situation exist with reference to the Kearsage Company?

A. No, they are leased. The Monroe mine and the Glen mine and the Pearce mine cover that.

Q. The lands in the Kearsage Company then have all been explored for iron? A. Yes, sir.

Q. What is the situation as to the Sutton Company?

A. There are a great many acres in the Sutton Company that have never been explored, and never will be explored, because they lie outside of [thr] range.

Q. This ore is removed under these leases under or upon a royalty basis, as I understand. A. Yes.

Q. How do you determine the amount of royalty that you are entitled to receive?

A. Each lease fixes the minimum that they must pay for mining in such case.

Q. How do you satisfy yourselves, or how does each company satisfy itself that on all of the ore mined the royalty on it is actually paid?

A. We have organized for that purpose a corporation known as the Meriden Mining Iron Company, with its office at Hibbing, Minnesota.

Q. That company is the agency then of these three

77 other companies?

A. That company by employment for our other companies determines any facts that we wish to know relating to our properties.

Q. It is your agent then?

A. We employ the company for that purpose.

Q. For looking after your corporation affairs?

A. Yes, because we couldn't do it ourselves.

Q. What individuals constitute that company?

A. That company has for its corporation the same as the Kearsage Company, the same stockholders.

Q. And the Kearsage Company has at least some of the same officers which these three companies involved in this suit have? A. Yes.

Q. And some in addition, as I understand, in the Kearsage?

A. No.

Q. Who are in the Kearsage company who are not in these three companies involved in this suit?

A. Mr. Frank Carleton and Mrs. Townsend are the only stockholders in the Kearsage Company who are not stockholders in the Sargent and Sutton Companies..

Q. Mr. Longyear is a stockholder?

A. Mr. John M. Longyear of Marquette, Michigan is.

Q. What is this Mr. Longyear?

A. Mr. Edmund J. Longyear. That refreshes my memory upon a point which I would like to cover, which I overlooked.

78 Mr. Edmund J. Longyear is engaged in the exploration of iron properties. He has a very large number of drills. He is related to Mr. John M. Longyear. In the middle nineties, about 1896, I can't give the exact date, the Pillsbury and Bennett interest made a contract with Mr. Longyear for the exploration of these lands, he to receive going rates for the drilling, and at the end to receive 3 per cent of the proceeds from ore discovered by his work. The contract followed the titles into the corporations.

Q. That is Mr. Edmund J. Longyear?

A. Yes, sir, Mr. Edmund J. Longyear.

Q. Mr. Edmund J. Longyear is not a stockholder in any of these three companies?

A. No, sir, he is not a stockholder.

Mr. Van Derlip: Let me correct that. He does hold one share in each one of the companies, so that he may represent Mr. John. M. Longyear legally.

Court here took a recess until two o'clock p. m. the same day.

Mr. Van Derlip: Before I call Mr. Snyder as a witness, Mr. Houpt, I intend to call your attention to what I am sure was an oversight on your part in your answer. The complaint alleges, among other things, beginning with paragraph, 3, the incorporation of the plaintiff companies, and at the end of the same it alleges that the companies were not organized for profit and are not liable to pay the tax. In the answer all the allegations in paragraphs one two and three are admitted.

79 It is agreed between counsel, with the permission of the Court that the answer may be amended as to the allegations in the latter part of paragraph 3, of the complaint.

Cross-Examination

By Mr. Houpt:

Q. You stated this morning that the Meriden Iron Co. had been employed by these corporations to look after their affairs.

A. On the range.

Q. Among other duties which they engaged to perform was that of supervising the taking out of the ore, in order that you might know what you were receiving your proper [rpyalty.]

A. That is true.

Q. Was that arrangement made in writing?

A. No. Let me explain about that. The Meriden Iron Co. was organized in 1903, by Mr. Bennett and Mr. Longyear for their use, but it lay dormant until 1905, and was not actually used. In 1905 this Pearce mine came back to the Pillsburys by reason of a forfeiture; they claimed that they had mined out all the ore and surrendered the lease back. We were convinced that they had not taken out all the ore, although they had bored round and injured our property. So, considering all these various interests we had to deal with, we thought it was best to organize the Meriden Company and let them take a lease upon the Pearce property, and see if we couldn't recover something out of it. So this corporation was used and stock
80 issued. And it never having been used before, and no stock having been issued, Bennett and Longyear and the Pillsburys made a lease to the Meriden Co. and that company started to operate and did operate and took out all the ore that was left. They found considerable ore. The Meriden Co. does business for anybody who may come. It has done business for people in Minneapolis and St. Paul. That was the organization of the Meriden Co.

Q. The Meriden Iron Co? A. Yes, sir.

Q. It was organized in 1903?

A. Yes, sir, through Mr. Longyear; my recollection is E. L. Longyear and Russell M. Bennett. I don't remember who the others were.

Q. Were any of the Pillsburys interested in it?

A. No.

Q. Or any of the Pillsbury heirs?

A. No, not at the time of the inception.

Q. It was Longyear and Bennett?

A. E. J. Longyear and Mr. Bennett came together with representatives the Pillsburys when it was a dormant corporation;

they permitted this one to be used. It remained dormant from 1903 to 1905.

Q. Then you revived it?

A. It was put into operation then.

Q. It was put into operation for the purpose of taking a lease of this Pearce mine? A. Yes, sir.

Q. Where the former lease had been abandoned? A. Yes

Q. Was it reorganized in any form at that time?

A. No.

Q. The same stockholders?

A. No. New stock was issued. The stock was issued at that time.

81 Q. Was stock at that time issued to the Pillsbury heirs?

A. Part of them, yes.

Q. That is, all the heirs who were interested in that property? A. Yes.

Q. Then when did you make your arrangement with the Meriden Iron Co. to look after the affairs of that corporation?

A. Just as soon as any question came up on any of our properties, relating to mining.

Q. Do you remember the date?

A. No, I can not tell you; but our general superintendent Mr. Warren is here, and I presume he can give you the date exactly when it was that he was instructed to look after that [arra-gement.]

Q. You say that arrangement was not embodied in any writing. A. No writing.

Q. Would that appear upon any of the books of the three corporations?

A. I have no recollection of such a thing. If there is the books will show. He was to look after it and render monthly bills, and we to pay the bills every month.

Q. Was that company authorized to make leases for the company? A. Oh, No.

Q. Did it pay the taxes upon your property?

A. Never, save and except the leasehold which it had. It was obliged to pay on their leasehold of the Pearce property. That was one of the conditions of the lease.

Q. I an speaking of the service that the company was

82 to perform for your company. You may state the services that that company was to perform.

A. For instance, we instructed the Meriden Co, through Mr. Warren to at once put either himself or a subordinate inspector upon that property, to see that it was opened in accordance with good engineering, and to test the ore as it came up, and check the shipments from the property, and to render monthly statements of the expense for that business.

Q. Did that company collect royalties?

A. No. It simply rendered monthly statements of the expenses.

Q. It rendered you statements of the royalties due.

A. No.

Q. It rendered no statements of royalties?

A. No, it rendered no statements of royalties. They simply stated the amount of ore shipped. That was a check against the railroad statements. That was all it amounted to.

Q. What compensation did you pay for these services?

A. We paid whatever bills he rendered for his services. There was no fixed amount. He rendered statements every month.

Q. Was a statement rendered to each one of these companies? A. Every one for whom they did work.

Q. During those years who was the executive head of the Meriden Iron Co.?

A. General superintendent O. B. Warren of Hibbing.

Q. Did you employ on behalf of the three corporations any other person to look after their affairs?

83 A. No, we considered Mr. O. B. Warren the best engineer whose services could be obtained. He was with the Meriden Iron Co., We employed that Company to get his services.

Q. You employed the Meriden Iron Co. and it employed Mr. Warren? A. Yes.

Q. About this Van Buren mine, that is one of the large leases.

A. That is the biggest lease. It included the most land.

Q. The greatest amount of iron.

A. Yes, as far as we know, all the iron bearing land in the Sargent Co. outside of their leases.

Q. They received advance royalties under that lease?

A. Yes.

Q. That was made what year? A. January 2, 1907.

Q. No ore has been removed under that lease?

A. No ore removed. They had a right to take out ore from the mine.

Q. Have the Van Buren people surrendered their lease?

A. Not yet.

Q. Has there been any corporation organized to take over the lease? A. Not to my knowledge.

Q. This Keewatin Co., that has been organized? A. Yes.

Q. Who [constitute-] the Kewatin Co.?

Objected to as immaterial because that company was organized after the period involved in this suit, with a view of conducting certain operations in the future, after 1915, and was not conceived until after 1911.

The objection is overruled.

84 Q. When was the company organized? A. In 1912.

Q. Was not the Kewatin Mining Company organized for the purpose of taking over this Van Buren lease? A. No.

The Court: I will rule that out. I do not see how it is material; it was after 1911.

Redirect Examination

By Mr. Van Derlip:

Q. You have stated that the Meriden Iron Co. was organized originally by Mr. E. J. Longyear and Mr. Bennett and some one else, for personal purposes, that after its organization no stock was issued, and that the corporation did not become an active company until 1905, prior to the organization of these three companies? A. Yes, sir, that is true.

Q. When the lease of the Pearce mine was surrendered, then with a view of having what ore there remained cleaned up and removed, the Pearce property was leased to the Meriden Iron Co.

A. Yes.

Q. As a lessee from the individual owners of the property.

A. Yes, that is true.

Q. Well, was this lease still in force when these properties were conveyed by the Pillsburys and by Messrs. Longyear & Bennett to these corporations? A. Yes.

Q. They took the lands subject to that lease? A. Yes.

Q. You started to say something about the nature of the business of the Meriden Iron Company, what business generally did it carry on?

A. The corporation was organized for the purpose of
85 mining ore and superintending mines, and doing anything in relation to mines generally; that is what it has done ever since it was incorporated; not for any particular property, not for this property, but for outside corporations.

Q. Has it been employed by the plaintiff corporations here, the same as they would employ any other corporation?

A. Yes, just the same. It simply was because it had as its head an engineer in whom they had great confidence that they employed this corporation, because it employed Mr. Warren.

Q. Was that company employed because it employed Mr. Warren?

A. Yes, that is absolutely true. It was employed because they wanted the services of Mr. Warren.

Q. Is it a fact, or is it not a fact, that the Meriden Iron Co. is doing and has done similar work for corporations and individuals entirely disconnected with the plaintiffs, to that which it has done and is now doing?

A. It certainly has. I can give you numerous instances if you want them.

Q. For instance, what patrons has it besides these plaintiffs?

The Court: I do not see how that is material, I understood that the general purpose of Mr. Houpt was to show that these land companies were doing business, and that to get at the amount of ore and look after it, they employed this Meriden Iron Co. instead of employing some individual.

Mr. Van Derlip: I suspect that Mr. Houpt intends to go further than the suggestion of your Honor. That he in-
86 tends to claim that because the Meriden Iron Co. is controlled by some [individduals] who are stockholders in the Kearsage, that this Meriden Co. was used as a stalking horse to cover up the actions of these corporations.

The Court: Do you make any point upon the question of the same persons being interested in the Meriden Co. who are interested in the Kearsage Co.?

Mr. Houpt: No.

The Court: Then I will sustain the [obj-ction].

Counsel for plaintiffs excepts to the ruling.

Q. You stated that some of the lands of the Sargent Co. had not yet been explored, what lands did you refer to?

A. I referred to lands of the Sargent Co. not selected by the U. S. Steel Co. as probable iron bearing lands, when the big lease was made. Lands which lay either north of the north boundary line of the new range, or south of the south boundary line, which we considered barren of ore, and of no value for iron purposes.

Q. They are not lands which the corporation is reserving for future exploration and development? A. No; not at all.

Q. As mineral lands? A. No, not at all.

Q. Is it not a fact that the iron formation on the Messaba Range is very distinctly defined?

A. Geologists say that it is very distinctly defined on the north by the outcropping quartz, beyond which there is
87 no iron ore. The south boundary line is defined by what is called "slates", which is not so accurately defined as the north line. But it is recognized as defining the south line.

Q. At the south line, the slate formation, no ore is found?

A. No ore is found.

Q. Is it or is it not a fact that the lands belonging to [th-se] plaintiff companies which are now within the limits of the iron formation, have been explored?

A. To my knowledge, they have all been explored. There is no hope for any thing in addition to what has been shown by exploration.

The Court: That explored land is now under lease?

Witness: Yes, sir, it is under lease.

Q. Since January 2, 1907, have these plaintiffs, or any of them, conducted explorations, or done any other work of exploration or development on any of their respective lands?
A. They have not done any exploration work. They did a little in 1912, but nothing prior to that time.
Q. But during the years that are in question in this case?
A. None whatever.

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88 RUSSELL M. BENNETT, sworn on behalf of plaintiffs, testifies as follows:

Examination-in-Chief

By Mr. VanDerlip.
Q. You are the Secretary and Treasurer of the plaintiff corporations. A. I am.
Q. And have been such since their organization?
A. I have, yes.
Q. After the filing or publication of te Articles of Incorporation of these companies, when was the first meeting of the stockholders held for the purpose of organization?
A. The meeting was called in May, but it was adjourned until July.
Q. What day?
A. The first meeting of the directors was May 15 1906, and it was adjourned until the 19th day of July, 1906.
Q. Was that true of all the corporations?
A. Yes, sir, all three of them were adjourned until that date.
Q. The day in May to which you refer was the date named in the articles for the first meeting? A. Yes, May 15th.
Q. They were not ready for organization then, so it was adjourned until the 19th of July. A. Yes, sir.
Q. Are you familiar with the history of the Meriden Iron Company? A. Yes, sir, I am.
Q. Did you hear Mr. Snyder's testimony in [relation] to it?
A. I did.
Q. Was that testimony correct, according to your knowledge and recollection?

A. That is substantially correct. The company was organized by Mr. E. J. Longyear and myself. I forget for what
89 purpose, but we [didn-t] use it. It lay dormant until 1905 when this question of operating the Pearce mine came up, and we utilized it for that purpose.

Q. The first stock issued by that corporation was issued at that time? A. Yes. In 1905 I think there were 108 shares, may be 100, I think 108. The authorized capital of the Meriden was $25,000, and there was $10,800 of it issued.

Q. You issued 108 shares representing each the 108th interest of the various owners of the property, the individual owners? A. That is right.

Q. Since that time the corporation has conducted the general business stated by Mr. Snyder. A. Yes.

Q. The employment of that company by the plaintiff companies in this case was for what purpose and reason?

A. As this property was leased and opened up, it became necessary to have an inspection, to see that it was opened up according to good engineering methods.

Mr. Van Derlip: I am going to ask a question which refers to a document in writing, and I will produce the document later.

Q. Was such inspection made to ascertain the amount of ore that should be removed under the rule provided for in the lease?

A. Under the general provision that the ore should be mined according to good engineering methods, and that there should be no unnecessary waste.

90 Q. There was authority expressly given to the lessor to enter upon the property, for the purpose of seeing that the provisions were carried out?

A. For the purpose of inspection and seeing that the provisions of the lease were properly carried out, it became necessary, as I said before, for the lessors to see that the provisions of the lease were carried out and a proper inspection made. We employed Mr. Warren, that is, the Meriden Iron Company employed Mr. Warren as its general [superintednent] for the purpose of carrying out and doing the inspection work

Q. When you say the inspection work, you mean that kind of work, or this specific work?

A. That kind of work for our companies and for other interests that might desire services of that character. The Meriden Iron Company inspected the properties. At each mine a local representative was stationed of the Meriden Company, usually an engineer. It was found necessary in making sur-

veys. The mining surveys which were supposed to be furnished to us were usually six months and sometimes longer, behind, so they were of very little use.

Q. Were these surveys furnished you by the lessees?

A. The leases provide that a map and survey shall be furnished by the lessees.

Q. To the lessors?

A. Yes, sir; but they were so far behind in their work that we [didn-t] receive them in time to be of any benefit to us. So we found it necessary to have our own surveys. Our engineer made surveys and kept them up to date, and [do--] at
91 this time. So as mining operations progress, if we find any ore is being wasted, we know from the surveys if such ore is being wasted, and we so inform our lessees.

Q. Was that the purpose of employing the Meriden Iron Company, to get that information?

A. Yes, it was. We employed the Meride on Company, and it in turn employed Mr. Warren.

The Court: The local engineer at e as he employed by the Meriden Iron Company?

Witness: Yes, sir, by the Meriden Ir Company. The Meriden Iron Company rendered to us each month bills for the services of the local engineers and also for the services of Mr. Warren, and for such proportion of the overhead charges as were apportioned, to the number of days on which they were employed on our work.

Q. In other words, each month you paid for whatever services had been rendered by the Meriden Company during the preceding month? A. Yes, sir.

Q. Whether it was greater or smaller? A. Yes, sir.

Q. And you paid only for the actual work that was rendered?

A. Yes, sir. The months when ore was being shipped the expenses would be rather heavier, and in the season when they were not shipping they would be comparatively less. In some months there would be practically no service or expenses.

Q. The employment of the Meriden Company by the plaintiff corporations then, was not upon the ground merely
92 that the stock of the company, this $108,000, was held by those interested in the plaintiff corporations?

A. No, that was not a reason whatever.

Q. So that company was employed, as any other engineer or as any other engineering company might be employed, simply because it rendered efficient service.

A. Because we needed this inspection work, and they were prepared to do it.

Q. Let me inquire whether the plaintiff corporations or any of them had an engineering department or any employees who were capable of rendering them such services as these.

A. No, I think not. Mr. E. J. Longyear, who has been employed by the plaintiff companies, does drilling, work, and he is a drilling expert.

Q. But he is not in the employment of the companies?

A. No, sir.

Q. Have you had in your regular employ engineers or others to do work of that character? A. Never.

Q. When Mr. E. J. Longyear was employed he was employed the same as any outsider to do certain work. A. Yes, sir.

Q. He was not employed by the companies. He was simply a contractor to do certain work?

A. We employed him in our drilling work. He was paid so much a foot.

Q. He was not on a salary? A. No, sir.

Q. You paid him by the piece?

A. For whatever work he did, yes, sir.

93 Q. This employment of Mr. Longyear was prior to your incorporation and the plaintiffs'? A. Yes, sir.

Q. The corporation did not do any exploration since that?

A. He did some drilling for us in 1906.

Q. But since the 2nd of June 1907?

A. No. We have done no exploration work since July 1907.

Q. This is the Mr. E. J. Longyear that Mr. Snyder referred to as having under the contract a 3% interest in the sales of ore? A. Yes.

Q. That is an arrangement which was made by the individuals before this corporation was organized?

A. Yes, sir, it was made on March 15, 1907.

Q. You heard Mr. Snyder's testimony in relation to the devolution of the title to these lands from the firm of John S. Pillsbry & Co. to these corporations? A. Yes, sir.

Q. Was that statement true, or was it not true, to your knowledge?

A. That is true, yes, sir. I believe all his statements are absolutely true.

Q. After the incorporation of the plaintiff companies were the lands which have been referred to, and which are now owned by these corporations, except so far as they may have disposed of certain tracts, conveyed to the corporations?

A. They were conveyed immediately after the incorporation, in February, 1906, I think.

Q. I show you a record book being that of that Sutton Land Company, and direct your attention to the entries
94 made therein, beginning on page three. What is the date of that meeting recorded upon page 3 and the succeeding pages? A. July 19, 1906.

Q. Was that the date when the corporations were organized, and when the deeds for these properties were delivered and accepted by the corporations?

A. They were delivered and accepted on this 19th day of July, as the minutes show.

Mr. Van Derlip: I am perfectly willing, Mr. Houpt, that you should put into the record any part of these minutes that you desire; but I should prefer to encumber the record as little as possible; so I will offer certain portions, with the understanding that you may put in such further minutes as you [seee] fit, as making perfectly clear the titles and interests of the grantors therein. I would like to offer in evidence that portion of the minutes of July 19, 1906 of each of the plaintiff [corporstions] which are exactly identical, with the exception of the descriptions of the properties, contained in a certain resolution, and with the permission of Mr. Houpt I should like to offer a transcript of the same rather than to leave the books in the custody of the Court. I will not read the entire record, which consists of recitals relating to the titles to these properties from John S. Pillsbury & Co., down through the various interests which were acquired by the different Pillsbury heirs, to the time when the whole of these titles were conveyed by these heirs and by Messrs. Longyear & Bennett
to these corporations. This sets out at a greater length
95 that Mr. Snyder testified as to the provisions of the will of George A. Pillsbury, and the conditions of all these various estates through which these titles finally vested in the numerous heirs in the proportions stated. It consists of certain preambles reciting these things, and finally winds up with this resolution:

"Now, therefore, for the purpose of carrying out the desire and intention of all of said parties, and the object of the organization of said corporation, and for the purpose of subserving the best interests of the estate of said George A. Pillsbury, deceased, and of each and every one of said grantors, and of this corporation, it is hereby Resolved that the Sutton Land Company hereby approves and accepts the offer of said grantors, and agrees to take over and receive the title, property and estate in said real estate and property conveyed by such deeds, and each of the same."

Mr. Van Derlip: The preamble having described the deeds which were tendered to the corporation.

"Resolved further that the proper officers of this corporation be, and they are hereby authorized and directed to issue the entire capital stock of this corporation in payment for the respective interests of said grantors in said real estate and property described in, and granted and conveyed by said deeds; certificates for said capital stock to be issued to the following named persons in the respective proportions
96 and amounts hereinbelow specified, to-wit:

Mr. Van Derlip: Then follows a detailed statement of the names of the grantors of those to whom the certificates shall be issued and the amount of each certificate.

It was provided, among other things, that there shall be issued to John M. Longyear 539 shares, to Edmund J. Longyear one share, to Russell M. Bennett 538 shares, to Norman C. Richardson one share, to John R. Van Derlip one share, said certificates together making 27/108ths of the capital stock to which said Russell M. Bennett is entitled. Then follows

"And said officers are hereby further authorized and instructed to deliver the same to said persons upon the vesting in said corporation of an indefeasible title to said lands by the delivery of the deeds above referred to, and of any other or additional deeds of conveyance that may be required or proper to effectuate the vesting of such title."

Then follow recitals in regard to these minors, and a provision by which the certificates of shares issued in their names shall be held in the office of the corporation until they shall attain their majority and shall [makes] deeds in conformity. to Schedule "A."

I offer in evidence this record of the meeting of July 19, 1906, and ask that it may be marked Exhibit 1.

97 Counsel for defendant objects to the introduction of Exhibit 1, on the ground that it is simply encumbering the record, that the testimony as to these titles and how they passed to the stockholders will not be contested, and that the real question is whether these corporations were engaged in doing business within the meaning of the tax law.

The Court: I think that the resolution is competent evidence. While the recitals are not evidence to prove these facts, yet I think it is competent to introduce the whole resolution for the purpose of showing how the devolution of title originated. I will overrule the objection.

Counsel for defendant excepts to the ruling.

Mr. Van Derlip: Will it be stipulated that one of these exhibits will suffice for all three companies?

Mr. Houpt: Yes, sir.

Mr. Van Derlip: We have here and can offer in evidence the specific deeds, but I suppose you do not question our ownership.

Mr. Houpt: We do not question your ownership.

Mr. Van Derlip: Then it may be admitted in the record that the plaintiffs under the deeds referred to in Exhibit 1, obtained title to the lands now held by them, with the exception of the Day 40?

Mr. Houpt: Yes.

Q. Mr. J. M. Longyear is not a resident and never has
98 been of the state of Minnesota.

A. No, he is a resident of the state of Michigan.

Q. Who has looked after the interests of J. M. Longyear and R. M. Bennett in this property now owned by the plaintiff corporations?

A. I have looked after Mr. Longyear's interests, with the exception of the representation that Mr. E. J. Longyear has in the board of directors of the three corporations.

Q. Have you been actively engaged in that?

A. I have been actively in charge of the business.

Q. Did you represent the interest of J. M. Longyear and Russell M. Bennett in the negotiations leading up to the organization of these corporations? A. I did.

Q. Speaking broadly, was the purpose which was stated by Mr. Snyder in his testimony this morning the real purpose of the organization of these corporations?

A. Mr. Snyder's testimony covered the facts.

Q. And was it true? A. That was true, yes, sir.

Q. Since the organization of these corporations in July, 1906, what if any business have they done?

A. They have not transacted any business, as I understand it. We leased, signed a lease on January 2, 1907 to the Van Buren Company of certain lands. This lease had been negotiated for, and practically everything determined by the autumn of 1905. In February, 1906, about the time the company was incorporated, the terms of the lease from the Sargent Land Company to the Van Buren Company were all of them
99 [det-rmined] upon, with the possible exception of the exact minimum which should go to the Sargent Company. That was decided upon later, in the summer or in the fall, I am not sure which.

Q. The execution of that lease on January, 1907, was then in pursuance of negotiations which had originated and been practically concluded in the fall of 1905, was it not? It was practically concluded at that time, before the organization of the company.

A. It was practically concluded in February, 1906 January or February.

Q. In February, before this corporation was organized?

A. Before it was completed, yes, sir, before that.

Q. Is it or is it not a fact that the organization of this corporation was one of the conditions for the lease to the Van Buren Iron Mining Company?

A. Yes, sir. The titles were in such shape that the Van Buren Company was quite insistent that we incorporate, so that we could make a perfectly valid lease. There had been a good deal of question raised in previous years in making leases as to the titles to these lands. They were so complicated by the deaths of Mr. George A. John S. and C. A. Pillsbury.

Q. Are you aware of any business which has been done by these corporations since the time of their organization, with the [excpetions] that you referred to, if you call that business, about the execution of that lease on January 2, 1907?

A. No, sir. No business has been transacted of any kind.

100 Q. Have these corporations, or has any of them, since the time of its organization, ever engaged in any business of any kind that has made a profit, or looking to make a profit?

A. No, sir; they have not.

Q. What disposition has been made of the receipts of these [verious] corporations from any source?

A. After paying expenses incidental to the [mmaintenance] of the corporations, the money has been paid out in dividends, or in liquidation of the assets of the corporation during the period which the statement covers.

Q. To whom were these payments made?

A. Made to the stockholders of the various corporations.

Q. In what proportion?

A. In proportion as their interests appear in the record.

Q. Has the company at any time carried any surplus for investment or otherwise?

A. No, sir; not in the years 1909, 1910, or 1911.

Q. Has it made any investments?

A. Made no investments, no, sir.

Q. Whether with a view of making a profit, or otherwise?

A. None whatever.

Q. There was some reference made to the purchase of a 40 acre tract known as the Day 40. A. Yes, sir.

Q. Do you recall when that purchase was made?

A. That purchase was made on August 6th, 1906. The
101 negotiations for this land were begun in 1905, in December I think. The individual owners of the land had platted a town site known as the Keewatin town site. About the time of the platting, or shortly afterwards, Mrs. Laura Day who lives here in Minneapolis, through her brother-in-law Mr. Robinson, platted an adjoining 40 to the one the individual owners had platted, and were prepared to sell lots. In some respects that 40 was a better one than the 40 which we had platted, and, in order to prevent competition, I entered into negotiations with Mr. Robinson, I think it was in December, to purchase this land. We agreed upon the price, and some time along, I think it was in January, possibly February of the following year, in 60 or 90 days, and agreed to take the land; but in the meantime we had started our incorporation, and it was held until after these incorporations were completed.

Q. That is, the execution and delivery of the deed?

A. Yes, sir, the execution and delivery of the deed were held. The land was deeded to the company.

Q. Have the corporations purchased any other property of that sort since that time?

A. That was the only land that was ever purchased.

Q. At the time this land was turned over to the corporation in July, 1906, had any portion of that been platted into lots?

A. Yes, this town site of Keewatin had been platted.

Q. The Pillsbury Addition had been platted?

A. The Pillsbury Addition had been platted several years prior.

102 Q. So when the corporations acquired these titles they acquired them with the plats already filed in the proper office? A. Yes, sir.

Q. As lots, and not as acres? A. Yes, sir.

The Court: As to the Day 40, the deed of that was made to the corporation?

Witness: Yes, sir.

The Court: Did the corporation pay for it?

Witness: Yes, sir.

The Court: Where did the money come from?

Witness: It came from, I am not sure, but I think it must have been provided by the individuals, because we hadn't any other money. I think the individuals put up, the money. I

would have to look that up, before I testify about that. It might have been paid out of the proceeds derived from some of these leases; but the time was so short after the incorporation, I am really unable to tell.

Q. At the time of the acquirement of these Pillsbury lands, and by Pillsbury lands, I mean the lands that had originally belonged to the John S. Pillsbury Company, in what did their value consist?

A. It consisted entirely of mineral possibilities of iron, the mineral value from the iron ore.

Q. What was the nature of the land, the nature of the surface of these lands, speaking generally?

A. Some low land, the higher land was on the Messaba
103 Range. The surface is rolling and broken. The entire distance is glacial, covered with large stones and boulders.

Q. What timber had at one time grown upon this land, was that standing or had it been removed?

A. The larger part of it had been removed, but part of it had not been cut.

Q. Did that timber become the property of the corporations? A. No, sir.

Q. Was it reserved by the grantors?

A. It was reserved by the grantors.

Q. That is, by the Pillsburys?

A. Yes, sir, by the Pillsburys.

Q. Did Longyear & Bennett have any interest in that timber? A. No, not at all.

Q. The title which you and Mr. Longyear had was subject to the right of the grantors to remove the timber?

A. To remove what remained uncut.

Q. At the time these lands were conveyed to the corporation were there any mining leases covering any of them, which had previously been executed by the individual owners of those lands? A. There were several.

Q. Can you state to the court these leases and the parties?

A. I have a list of them here, I think.

Q. Have you in court here the original leases for the inspection of Mr. Houpt, if he desires to make one? A. We have.

The Court: These are leases now outstanding?

104 Witness: Yes, sir, now outstanding. The Alexander mine lease. Do you want a description of the land?

Mr. Houpt: Give the number of acres.

Witness: This is the S. W. of the N. W., the Alexander mine; the name of the lessee is the Republic Iron & Steel Company.

Mr. Houpt: I think these leases should be introduced in evidence.

The Court: Is this lease outstanding?

Witness: No, sir, it is not outstanding.

The Court: Is there any occasion for the leases that are outside of these years 1909, 1910 and 1911?

Mr. Van Derlip: No, I think not.

Witness: This was subsequently surrendered. The S. ½ of the S. E. ¼ of 35-58-21, St. Louis Co. Minn., known as the Mahoming. That is in the Sargent Company. I am speaking now of the Mahoming lease. The ore has all been paid for, and they have the right to use the surface for dumping purposes. Then there is the S. W. of the S. W. 35-58-21, St. Louis Co. Minn. The Chemung. The S. W. of the S. W. of 35-58-21, St. Louis County, Minnesota. Name of the lessee, the Chemung Iron Mining Company. Date of the lease April 10, 1901; term of the lease 50 years, date of expiration 1951. Royalty rate 25 cents a ton. Annual minimum 50,000 tons. Amount minimum $12,500. The St. Paul: N. ½ of the S. W. ¼, sec.
105 24 lessee Corrigan & McKinney Co.; date of lease Jan. 1, 1903, Term of lease 25 years; expiration of lease Jan. 1, 1928; royalty 35c a ton; annual minimum 150,000 tons, amount minimum $52,500. Longyear, N. W. ¼ N. W. ¼ sec. 5, and S. E. ¼ of S. E. ¼ sec. 6 80 acres town, 57 Range 20 St. Louis Co Minn. Name of lessee, Interstate Iron Co., date of lease Jan. 8, 1902, Term of lease 50 years, expiration of lease Dec. 31, 1951. Royalty 25c a ton, annual minimum 75,000, Amount minimum $18,750.

Van Buren Iron Co. leased certain lands in St. Louis and Itasca Cos. as per schedule attached, about 3,435 acres, date of lease Jan. 2, 1907, term of lease, indeterminate, can be surrendered Jan. 2, 1915, by giving two years previous notice. Royalties are as scheduled, and increase from year to year. The notice should be eighteen months, instead of two years. The royalty is on a sliding scale. The annual minimum payments were to be paid on the 20th of Jan. of each year for the preceding year. For the year 1909, 346,500 tons at the rate of 91.8c for the year 1910, 462,000 at 95.2c and for the year 1911, 557,500 at the rate of 98.6c.

Q. Does that recital cover all of the leases upon lands owned by the Sargent Land Co?

A. It does. We have the original of these leases, including the lease of the Alexander mine which has been surrendered.

Mr. Van Derlip. I will offer them in evidence with the understanding that only such parts of the leases shall be
106 included as the parties see fit.

Q. Are all these leases to which you have referred, with the exception of the Van Buren Iron Co. lease in substantially the same terms and condition?

A. They were on a common form, but they are not the same terms, because some of the royalties are higher. The conditions are the same. The descriptions of course are different.

The Court: They are here, and if Mr. Houpt wants to do so he can present them in his case.

Q. Will you now give us the information relative to lands belonging to the Kearsage Co.

A. The Pearce mine. That was exhausted last year, but was not exhausted in these years. It was cleaned up in 1911. That is the N. E. of the N. W. sec. 28, town 58, range 20; leased Oct. 1, 1905, to the Meriden Iron Co., term of lease 10 years, expiration of lease Oct. 1, 1915, royalty 25c, increasing royalty going up to a dollar per ton Jan. 1, 1910. There was no annual minimum.

Glen Mine S. E. of the N. E. ¼ and E. ½ of the S. E. ¼, 120 acres, sec. 29, town. 58, range 20, St. Louis Co. They are part of the Lake Superior Consolidated Iron Mines, the Oliver Iron Mining Co. Date of lease Jan. 1, 1900, term of lease 50 years, expiration of lease Jan. 1, 1950, Royalty 25c a ton; annual minimum 100,000 [tins]; amount of minimum $25,000.

Monroe Mine, S. E. of N. E. and E. ½ of S. E. sec. 28, town 58, range 20, St. Louis Co. Name of lessee Chemung Iron Co., date of lease [lease] March 5, 1900, term of lease 50
107 years, expiration of lease Jan. 1, 1950. There is no royalty rate; it was 25c a ton for Bessemer and 12½ for non-Bessemer ore. Then that rate was changed Jan. 1, 1913 to 15c per ton for all ore. Annual minimum 100,000 tons, amount of minimum $15,000.

That comprises all the Kearsage leases.

Mr. Van Derlip: We have the original leases if you desire to use them.

Mr. Houpt: Very well.

Q. Now please state the leases existing upon properties belonging to the Sutton Land Co., at the time of the acquirement of these lands by the corporation, and if any have been executed since that date.

A. [They] are only two leases outstanding of the Sutton Lands, and none have been executed since the formation of the corporation. They are the E. ½ of the S. W. ¼ of sec. 27, town. 58, range 20, St. Louis Co., Minn., and the W. ½ of the S. W. ¼ of sec. 27, town 58, range 20. Both of them run to John B. Adams, and have been assigned by him to the Arthur Mining Co. They are dated March 1, 1902, term of lease 50 years, expiration of lease April 1, [1852]. Royalty 25c a ton, Annual minimum 100,000 tons, amount of royalty $25,000 annually. That is in each case.

Mr. Snyder: I think the 100,000 minimum covers both leases.

Witness: Yes, that is right, 50,000 minimum in each
108 case.

Q. $12,500 annual minimum payment? A. Yes, sir.
Q. Have you now described all the leases existing at the time this property was transferred to the plaintiff corporations, and those that have been executed since that date?
A. I have described all of the outstanding leases.
Q. Do the plaintiff corporations receive any income from lands covered by these respective leases, beyond the amounts named in these leases as advance royalties, or royalties upon ore actually shipped?
A. There have been some town lots sold.
Q. That does not answer my question.
A. No, none whatever.
Q. Under the terms of the leases can these corporations receive any [or] other or different income than those specified in the leases themselves?

Objected to.

Objection sustained.

Q. Can the plaintiffs or can either of them receive any income from any of these lands covered by the leases which you have specified, other than the income derived under those leases? A. It can not.
Q. Do the plaintiff companies or either of them exercise any control or right over any of these lands covered by the leases?
A. They do not. They are out of our control. They are out of our use.
Q. Have they so been out of your control and out of your use since the dates of the respective leases?
A. Yes, since they went into force.

Q. Other than the disposition of ores under the leases which you detailed, have these companies sold or made
109 any other sales or disposition of ore on any of the lands belonging to them respectively? A. No; they have not.

Q. During the years 1909 to 1911 inclusive from what was the income of these corporations substantially derived?

A. From royalty payments and advance minimum royalty payments under the mining leases referred to.

Q. You say a few lots have been sold from time to time, and from these sales the companies have received some small amounts.

A. Lots have been sold, and receipts have been derived from those sales.

Q. Who controls the disposition of these lots?

A. The Longyear Company at Hibbing does the selling of the lots on a commission.

Q. Does any one of the plaintiff companies maintain an office or take any part in the sale or disposition of these lots or any other property?

A. No, sir. The lots are all sold by the E. J. Longyear agency.

Q. When did the E. J. Longyear Company become associated with this property as sales agent?

A. At the time the additions were platted.

Q. That would be prior to, the incorporation of these companies?

A. In the case of the Keewatin, and in the case of the Pillsbury addition, but the second addition to Chisholm I am not sure about.

Q. With respect to the lots known as Pillsbury's ad-
110 dition to Hibbing and the Keewatin addition or town site, Mr. Longyear was appointed agent for the sale of them before the organization of these corporations?

A. He was.

Q. But you are not entirely sure as to whether he was so appointed in the case of the Chisholm addition?

A. No, but I can look it up.

Q. Will you please look that up? A. Yes.

Then follow the usual items of attorney fees, Salary of assistant secretary and treasurer, stenographer's salary and taxes.

Q. Now I will direct your attention to the year 1910. Receipts from the Glen mine for that year. For ore mined and shipped, $104,168.57 from the Pearce mine, $8,758.36 for ore mined and shipped. The Monroe mine $14,338.70 for advance minimum payment. Then sale of lots $3,394.24 second addition to Chisholm.

Q. They were sold under the same arrangement?

A. Yes. Then there is interest $332.61, that is for interest on deferred payments on lots.

Q. The item of $3,396.03.

A. That is for inspection I think, no, registration expenses. Monroe mine expense $2,970.48, that is for inspection. General expenses $127.74.

Q. The item of $300 Pearce Addition to Chisholm, expense?

A. That was for the survey of the Pearce 40, so called, on which we conducted mining operations. The ore was about exhausted, and the Kearsage Company had planned to plat it. We surveyed it but the plat never was accepted by
111 the village council, and the whole thing fell through. It never was platted by the Kearsage Company.

Q. Also here are the usual items for your office force and attorney fees? [—.] Yes, sir.

Q. Now for the year 1911 how much were the receipts from the Glen mine?

A. $47,585.97 for ore mined and shipped. From the Pearce mine $84,123.51 from the Monroe $14,550 minimum royalty payments. Then there is an item of $301.34 for lots sold in 2nd addition to Chisholm, and an item of $46.63 interest received.

Q. Then disbursements, Monroe mine expense $3,065.30.

A. That is inspection.

Q. Glen mine expense $2,440.81? A. Inspection.

Q. Taxes and the usual expenses of the office force.

A. Correct.

Q. Concerning the Kearsage Land Company, I call your attention to your minute book for that company of April 30, 1909. What action was taken at that time authorizing the officers of the corporation to make test pitting on the N. E. of the N. W. ¼ of Sec. 28, [twon] 58, range 20?

A. There was a resolution passed. Mr. C. S. Pillsbury moved and Mr. E. C. Gale seconded a motion that the officers of the corporation be and they are authorized and empowered to prove by test pitting the N. E. ¼ of the N. W. ¼ of Sec. 28, township 58, range 20, and if no merchantable ore be found that the same be platted into blocks and lots. This is the Pearce 40 that I just referred to. This item of
112 $990.80 in the year 1909 for [for] expense of exploration is undoubtedly for that work.

Pursuant to that resolution test pitting was carried out, and was this item of $990.80 the expense incurred under that resolution?

A. Yes. [It] am very sure it is. We didn't carry on any other exploration. It must be that.

Q. Will you look that up and verify it?

A. Yes, sir. I have a memorandum of that.

Q. May 27th, [1919], what action was taken by the board at that time with reference to the Oliver Mining Company's lease?

A. There is a resolution pertaining to that. It was passed in connection with a dispute in the Glen mine over some ore, low grade ore, whether it should be mined out clean, or whether they should be permitted to cave it.

Q. By caving, you mean wasting it?

A. Yes, sir, wasting it.

Q. What is the resolution? A. Shall I read it?

Q. Yes, read it, please.

A. "Whereas the lease dated January 1, 1900 now held by the Oliver Mining Company, of the Glen mine, contains among others the following provisions: 'the said second party expressly covenants and agrees to mine out clean as it goes all of the ore in the mines or ore deposits opened on said premises, which shall assay 57% or upwards of metallic iron, without regard to the phosphorus contained therein, allowing only for usual and reasonable waste, it being the intention of the parties hereto and the meaning of this lease, that whereas certain of the iron ore underlying or upon the premises hereby leased is supposed to be richer in metallic iron
113 and lower in phosphorus than other portions of the ore upon said premises, the party of the second part shall not discriminate between any of said ores in their mining operations upon said premises, but shall remove as it goes the entire ore deposit which shall assay not less than 57% of metallic iron from the level or levels on which the mining operations are or shall be conducted, to the surface of the ore deposit.

"That all the earth, stones and other debris and waste excavated or removed in the process of exploring or mining, or in their working operations or improvements above authorized, shall be so deposited, and all the work and operations on said premises shall be so conducted, carried on and completed that the same shall not hinder or render dangerous or unreasonably inconvenient the future explorations of said premises for ores or [minreals], or the continuation of the operations or work of mining thereon, and in such manner only as is usual or approved by experienced and skillful miners, having [dur] reference to the future and the permanent value of said premises as an iron mine.

"Whereas the main part of the ore deposit in the Glen mine assays 57% and upwards in metallic iron, but has overlying

it a stratum of low grade ore mixed with decomposed slate, and paint-rock in that portion of the leased premises described as follows: "That area bounded on the north by the east and west line shown on the plan maps of the Oliver Mining Company and the Kearsage Land Company as the '400 N.
114 line,' it being 400 ft north of the Zero line, (the east and west centre line of section 22, township 58, range 20) and bounded on the south by the '250 S. line,' this line being 250 ft south of the Zero line, containing iron ore which this company believes will before many years become merchantable and constitute a valuable asset of the corporation.

"Whereas the Kearsage Land Company has employed Mr. O. B. Warren as its general superintendent, and had instructed him to carefully inspect the mining operations being carried on by the Oliver Mining Company in the Glen mine, and to require the lessee to mine all ore assaying 45% or over in metallic iron, wherever, by the mining operation of ore of that grade, if not mined when the ore containing 57% and upwards of metallic iron is mined, will be left 'unreasonably inconvenient' for the future mining thereof, and the value of the premises, as far as the ore is concerned, will be permanently destroyed as an iron mine;

"Whereas the Oliver Iron Mining Company claims that the structure and composition of the above mentioned statum of low grade ore is not suitable for furnace use at present, and is not merchantable;

"Whereas pursuant to his instructions Mr. Warren has required the Oliver Mining Company to mine and ship, and to conserve for the future benefit of itself, or of the fee owner, this overlying stratum of low grade ore;

"Whereas dispute has arisen between the representatives of the Kearsage Land Company and the Oliver Mining
115 Company as to the construction of the provisions of the lease hereinbefore set out, so far as they relate to the mining or conservation of the low grade ore hereinabove particularly mentioned;

"Whereas The Oliver Mining Company has notified the Kearsage Land [Compant] that it does not intend to mine any of the overlying low grade stratum of ore assaying less than 57% in metallic iron, save and excepting as it may choose to, and intends to take out the now merchantable ore underneath the same, and cave the overlying low grade ore, maintaining that

under the methods used by it, the low grade ore does and will fall substantially in a mass, and be conserved for future mining operations within the meaning of the lease, when such ore becomes of merchantable value;

"Whereas, on the contrary, the Kearsage Land Company claims that, by the terms of the lease, the lessee is obliged to so conduct its mining operations, as not to drop down and cave the stratum of low grade ore; asserting that said stratum of low grade ore cannot be conserved in any known method of mining engineering; that, if such stratum of low grade ore is undermined and left without support and caved, the body of low grade ore will be [total-y] wasted and lost; and that the Kearsage Land Company will suffer permanent damage.

"Whereas this corporation asserts that by the terms of said lease the lessee has no right to remove from said mine,
116 nor to waste (save and except with the consent of this company) any ore in said mine assaying under 57% in metallic iron;

"Whereas the Oliver Mining Company has given assurance to this company that if it is permitted to cave the overlying burden of low grade ore, it will, in all of the other mining operations on the Glen mine, mine out all ore assaying 57% and upwards of metallic iron in accordance with the terms of its lease, and especially in such a manner that 'all the work and operations on said premises shall be so conducted, carried on and completed that the same shall not hinder or render dangerous or unreasonably inconvenient future explorations of said premises for ores and minerals, or the continuation of the operation or work of mining thereon, and in such a manner only as is usual or approved by experienced and [skil-ful] miners, having due reference to the future and permanent value of said premises as an iron mine.

"Resolved that the Kearsage Land Company, with the aim of avoiding controversy with the Oliver Mining Company in the business relations which must continue to exist between them, hereby consents that the Oliver Mining Company may mine and remove so much of said overlying stratum of low grade ore, in that portion of the leased premises hereinbefore specifically described, as it may choose, and may cave the rest if said stratum with its overburden; and the Kearsage Land Company hereby waives its claim for damages accrued or to accrue from the caving of said stratum of low grade ore, without preju-
117 dice, however, to its rights to enforce the terms of the lease as to any ore in the mine, other than said overlying stratum, in the area of the leased premises above described,

assaying less than 57% in metallic iron; that the action of the Kearsage Land Company in consenting to the caving of said stratum of low grade ore, is to attach only to the Glen mine, and is not to be taken as a precedent in any future mining operations conducted by the Oliver Mining Company, under any of its leases from this company or with any of its associates.

"Resolved further that the Kearsage Land Company expresses its unqualified endorsement of the competent and thorough manner in which Mr. O. B. Warren has conducted his supervision of the Glen mine and regrets that the Oliver Mining Company has felt that there has been any occasion for any criticism of his methods;

"Resolved further that this resolution be spread upon the minutes of this meeting, and that a copy thereof be mailed by the secretary to the Oliver Mining Company and to Mr. O. B. Warren.

"The motion was seconded by Mr. Van Derlip, and was thereupon unanimously adopted."

"Whereupon the meeting adjourned. Signed R. M. Bennett Secretary."

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118 The following Exhibits were produced by counsel for plaintiffs, and marked as Exhibits in the case during the examination in chief of Mr. Russell M. Bennett.

Exhibit 1. Record of Directors' Meetings of July 19. 1906.

Exhibit 2. Report of Receipts and Disbursements of the Sargent Land Company for the year 1909.

Exhibit 3. The same as above for the year 1910.

Exhibit 4. The same for the year 1911.

Exhibit 6. Letter from Sargent Land Company to Frederick von Baumbach dated February 27, 1913 remitting check for corporation tax.

Exhibit 5. Return of annual net income by Sargent Land Company.

Exhibit 7. Same as to Kearsage Land Company.

Exhibit 8. Same as to Sutton Company.

Exhibit 9. Receipts and Disbursements Kearsage Land Co. 1909.

Exhibit 10. Receipts and Disbursements Kearsage Land Co., 1910.

Exhibit 11. Receipts and Disbursements Kearsage Land Co., 1911.

Exhibit 12. Receipts and Disbursements Sutton Land Co., 1909.

Exhibit 13. Receipts and Disbursements Sutton Land Co., 1910.

Exhibit 14. Receipts and Disbursements Sutton Land Co., 1911.

Cross-Examination

By Mr. Houpt.

Q. It appears from this [resulution,] as I caught it from your reading, that the Kearsage Mining Co. employed Mr. Warren directly?

119 A. Mr. Warren was employed by our company.

Q. Does not the resolution in express terms employ Mr. Warren?

A. According to the resolution it does, yes, sir.

Q. What page is that you were reading from?

A. Page 59.

Mr. Van Derlip: Mr. Houpt advises me that he is now ready to admit that the plaintiffs in these various actions made two applications for the abatement of these taxes, which applications were denied, and thereafter having paid the taxes it made two applications for the refundment thereof, which applications were also denied, all as alleged in the complaint.

Mr. Houpt: The facts are admitted as stated.

(Court adjourned until July 31, 1913 at 10 a. m.)

Q. I was about to direct your attention to the minutes under date of Sept. 28, 1909. It appears that you took some action at that time concerning the N. W. ¼ of 28-58-20. Did you by resolution at that time agree that that quarter should be platted into town lots?

A. It was moved by Mr. Charles S. Pillsbury and duly seconded that a portion of the N. E. ¼ of the N. W. ¼ of section 28, township 58, range 20, known as the Pearce mine forty, be platted into town lots, and that Mr. E. J. Longyear, be instructed to employ the Duluth Engineering Company to survey and plat the same; also that Mr. E. J. Longyear be secured as an agent to sell the lots on a commission of 10%.

Q. On what page does that occur?

A. Page 67, September 28, 1909.

Q. By the terms of that resolution Mr. E. J. Longyea
was employed by the corporation as its agent to plat
120 portion of this 40, and then to dispose of the lots.

A. Yes, the E. J. Longyear company. Mr. E. J. Long
year individually had nothing to do with it.

Q. But Mr. E. J. Longyear is mentioned individually in th
resolution? A. Yes, sir.

Q. Now I will direct your attention to the action of th
board of directors [und-r] date of June 29th, 1910. It appear
from my memoranda that a resolution was passed at that tim
amending the lease of the Meridem Iron Company, and increa
ing the royalty under the lease from 25c per ton to one dolla
per ton after January 1, 1910; have you such an entry i
your book?

A. Yes. Resolved that the proper officers be and they ar
hereby authorized and directed to execute and deliver an agre
ment dated December 31, 1909, with the Meriden Iron Com
pany, altering and amending a certain lease dated October
1905 made with said Meriden Iron Company, covering th
Northeast ¼ of the Northeast ¼ of section 28, township 5
range 20, St. Louis County, Minnesota, so that the rate
royalty to be paid on all ore mined and shipped from said min
shall be one dollar per ton instead of 25 cents per ton; sai
change to take effect as of January 1, 1910.

Q. Will you turn to the resolution of July 19, 1911 relatin
to the transfer of certain land contracts to the Meriden Iro
Company, and read that resolution.

A. Mr. Charles S. Pillsbury offered the following resol
tion: Resolved that this corporation, in consideration of th
sum of one dollar and other good and valuable consider
121 tions to it in hand paid, sell, assign and transfer unt
the Meriden Iron Company all of the following describe
pieces or parcels of real estate, situated and being in the 2
Addition to Chisholm, according to the plat thereof on file or
record in the [foffice] of the Register of Deeds in and for th
County of St. Louis and State of Minnesota, to-wit. Do yo
want me to give the numbers of the lots?

Q. Can you give the number of lots?

A. It is pretty hard to pick [then] out.

Q. By that resolution you transferred and intended to tran
fer to the Meriden Iron Company all of the lots which you ha
owned in that addition to Chisholm?

A. That was the intention.

Q. And also all contracts outstanding for the sales of lots

A. That was the intention. They were not transferred u
til 1912.

Q. The resolution was dated on that date?

A. Yes, sir.

Q. And they were transferred pursuant to that resolution?
A. Yes, sir.
Q. And the contracts transferred were contracts entered into between the years 1908 to 1910 inclusive?
A. 1908 and 1909. I don't think any in 1910, yes, there was one in 1910.
Q. Was that arrangement with the Meriden Iron Company entered into for the same purpose as you made the arrangement with John S. Pillsbury?
A. Only partially; that was one of the reasons. We wanted to transfer these lots anyway, because of the fact that the Meriden Iron Company had got an office in Hibbing, and
122 E. J. Longyear, who was the sales agent for those lots, had an office in Hibbing. It was to save, when sales were made, sending the deeds and contracts down to Minneapolis to be signed. We would have done that in any event.
Q. That transfer was made for the nominal consideration of one dollar? A. One dollar, yes.
Q. So the Meriden Iron Company only held the lots in trust, held them, for the benefit of the Kearsage Land Company?
A. The sale was not made, as I remember it, according to the resolution. There was a demand note given by the Meriden Iron Company to the Kearsage Company for $25,000. As fast as the lots were sold the money was endorsed on that demand note until it paid it.

The Court: As I understand it, the stockholders of the Meriden Iron Company are the same as the stockholders of the Kearsage Land Company.

A. Yes, sir, identically the same.
Q. Was that $25,000 the agreed value of the property?
A. It was the same valuation that was put on the lots, yes.
Q. Did that $25,000 limit and fix the amount that the Kearsage stockholders were to get out of these lots?
A. Absolutely. The amount of $25,000 was the amount that the Kearsage stockholders were to receive under that demand note.
Q. Then all the money in excess of that, would that belong to the Meriden Iron Company? A. Yes, sir.
123 Q. That was the compensation then for the Meriden Iron Company? A. Yes, sir.
Q. Whatever they received in excess of $25,000 for doing the business?
A. There would be some profit to the Meriden Iron Company in selling these lots over and above the $25,000.

Q. You say the profit over and above the $25,000 was t
compensation of the Meriden Iron Company for doing th
business?

A. Nothing was said about that. Presumably, the Merid
Iron Company would receive the profit for selling these lo
over and above the $25,000.

Q. Suppose there was not $25,000 realized out of the sa
of these lots, was the Meriden Iron Company to make that
then? A. Certainly, absolutely.

Q. You mean to say that the Meriden Iron Company was a
solutely bound for the sum of $25,000.

A. Bound for the same. Bound for the sum of $25,000
the demand note.

Q. The Meriden Iron Company's stockholders were identic
with the Kearsage [Company'd] stockholders.

A. The same holders exactly.

Q. So in this transaction, so far as gain or loss was co
cerned, it was similar to a man taking money out of o
124 pocket and putting it in another?

(Witness makes no answer)

Q. [Isn-t] it a fact that the main purpose in view in ente
ing into that transaction was to avoid the appearance of t
Kearsage Land Company doing business?

A. I think that would be the principal reason; but, as I sa
before, we would have made the transfer any way, just as
matter of convenience. We had discussed it, and had decided
do it.

Q. In all of these companies you held annual meetings
the [st-ckholders]. A. Yes, sir.

Q. It was the invariable rule at all of these meetings of t
stockholders to approve, ratify and confirm the action of t
board of directors for the preceding year.

A. It was customary. I think it was done in each year.

Q. I think you said you had no stated time for declari
dividends?

A. We would declare them when the the royalty payme
were made; they were made each month, and we usually held
meeting soon after the payment. For instance, if the royal
payment was due on the 20th of the month, we would hold
meeting about the end of the month. In the case of the V
Buren mine lease we held meetings four times a year, becau
the payments were due four times a year.

Q. The dividends paid by the Kearsage Land Company
the year 1909 were $111,240.

A. I am not sure. I would have to have [have] the ca
statement. Yes, that is the sum.

125 Q. For the year 1910 $123,120. A. That is correct.
Q. For the year 1911 $143,100. A. That is correct.
Q. I will now call your attention to the Sutton Land Company, beginning with the year 1909; what were the receipts and royalties for that year, which involves the S. W. ¼ of 27-58-20?
A. The receipts for, advance minimum royalty payments for the S. W. ¼ [27-58-2-] were $24,250.
Q. That means that there was no ore removed?
A. No ore removed.
Q. There is an item of timber sold that year, $1,490.
A. That was for [for] some hardwood timber that was on the land.
Q. Did the company have that timber cut?
A. No, I think they issued permits for cutting it. That is, they sold it under permits.
Q. That is, they sold the stumpage?
A. Yes, sir, they sold the stumpage.
Q. For that year there is an item of general expense of $110.22, and superintendent's expense $42.49, is that correct.
A. Yes, sir, that is correct.
[A.] Miscellaneous land expense $41.39. A. Correct.
Q. Taxes $439.34. A. Correct.
Q. Then there are the usual fees for office force, those expenses were incurred in about the same manner as you previously testified. Have you the itemized statement here of those general expenses, and also of the expenses charged against the property that I asked for [yestreday]?
A. Yes, I have a statement showing just what those
126 are.
Q. Now for the year 1910 did you receive the same amount of advance on ore?
A. The same amount, $24,250.
Q. The item of $570 timber sold, that is stumpage?
A. That is stumpage, the same as the other.
Q. Here is superintendent's expense, $111.21, miscellaneous land expense $66.51 and general expense $388.10.
A. That is correct.
Q. In addition to the regular fees for salaries of the office force. A. Correct.
Q. For the year 1911 the same amount for advances on ore.
A. Yes.
Q. For timber sold $500, general expense $473.59, and taxes $370.57? A. Yes, sir. That is correct.
Q. And the usual salaries for the office? A. Yes, sir.
The Court: No charge for supervision during that time?
Witness: No specific charge, if there is any it is under the general head of expenses $473.59.

Mr. Van Derlip: No active mining operations were bei
conducted on these lands at that time.

The Court: There is a charge in 1909 and in 1910 for supe
intendence.

Witness: That is our custom to survey our properties i
advance of their opening. That was for engineering duri
that period.

Q. Calling your attention to the action of the board of
rectors of the Sutton Land Company on April 30, 1909, it a
pears that there was some action transferring timber
127 the J. S. Pillsbury Company.

A. We desired to sell and dispose of the stumpage
some lands. It was moved by Mr. Carleton and seconded
Mr. Snyder that the officers of the corporation make a li
of the lands of the corporation, and place the same in the han
of the J. S. Pillsbury Company with authority to sell and d
pose of the stumpage on said lands through their agent M
Thomas Nary.

The motion was duly carried.

Q. The item of timber sold to which I called your attenti
was the produce of sales made from lands embraced in th
resolution? A. I think it was, yes.

Q. You may turn to the action of the same directors on I
cember 6th, 1910 concerning the Chisholm Street Railway ma
ter.

A. "Upon motion of Mr. J. S. Pillsbury a committee co
sisting of Mr. C. S. Pillsbury; R. M. Bennett and J. R. V
Derlip was appointed, with authority to negotiate with t
promotors of a street railway line between Hibbing and Ch
holm, with reference to passing over any lands belonging to th
[co-pany,] with full power and authority to act in behalf
this company in the premises. The motion being duly second
was unanimously adopted, and the chair declared the appoi
ment of the committee named in said motion."

Q. The dividends paid (Sutton) for the year 1909 were?

A. $22,140.

Q. And for the year 1910? A. $23,760.

[A.] And for the year 1911? A. $23,220.

Q. Referring again to the item in the Sargent Compa
128 for the year 1909, under the head of disbursements, th
is $2,927.20 for inspection; what items go to make
that aggregate?

A. I have not the items here, I did not know that you desi
them. I testified I think it was for inspection bills of E.

Longyear Company for inspection and drilling done about the Great Western Mining Company on these lands for that year.

Q. Have you the items entering into the general expenses of $2,518.35?

A. Yes, I have them. For the month of January 1909 premiums on bonds of the treasurer and assistant treasurer $55. Postage, light and telephone, stationery, etc. $20.93., totalling $75.93 Office rent, postage, light telephone, for January, February, March and April, $40.04, the same items for June and July $25.79; August stationery, 83; October registration of titles $358.66, November registration of titles $2,186 of the Sargent company lands, under the Torrens law. O. B. Warren, Expenses checking up records, $32,27, making a total of $2,721.69. Credit of refund Chisholm fire for subscriptions $203.34, making net $2,518.35.

Q. Have you the items that make up the aggregate of miscellaneous land expense $703.89 for the year 1910 for the same company?

A. No, I didn't make that, you didn't ask for it, we can get it for you.

Q. Have you the items constituting the Mine expense for the Glen Company for the year 1909, $5,064.95?

A. Yes, I have that. For the month of January the expense was $295.92 Superintendence, O. B. Warren, $108; in-
129 spection $50; engineering, $81.40, expenses $38; special expense $4.27. Hibbing office expenses, $23.40, amounting to $305.07. E. J. Longyear paid 3% of these inspection expenses. He has a 3% interest in the proceeds of the royalties and pays 3% as his proportion of the inspection expenses. Month of February, $377.42; superintendence, O. B. Warren $144; inspection $50; engineering $124.30; special clerical work $1.20; current expenses, $40, analysis, $4.40; Hibbing office expenses, $25.20, amounting to $389.10. 3% of that was paid by E. J. Longyear, which leaves $377.42. For the month of March, $439.50. Superintendence, O. B. Warren, $216; inspection, $104; engineering, $40.50; barn expenses, $34, analysis, 40c; special expense, $10.19; Hibbing office expense, $48, making a total of $453.09. For the month of April $696.02, Superintendence, O. B. Warren $252; inspection, $63.97; engineering, $162.47; special clerical work, 90c; travelling expenses, $7.84; barn expenses, $60; analysis, $1.60; special expense, $2; Hibbing office expense, $56; making a total of $606.78. 3% paid by Mr. Longyear $18.20 making $584.58. I have the items of the test pitting that was done on this Pearce 40,900 and some odd dollars. Glem mine for the month of May; superintendence, O. B. Warren, $210; inspection, $61,01; engineering, $180.72; special expense, $11.40, barn expense, $42; analysis,

$5.60; special telephone expense, $3.37; special expense, $2.48; Hibbing office expense, $40; total $566.58.

130 The Court: Is there any necessity for going through all these months. Is it true that the items for the balance of the months of the year run for the same class of work in each case?

Witness: Yes, sir, about the same in character all the way through.

Q. And the same would be true for the years 1910 and 1911 for the same class of disbursements?

A. Yes, sir, the same character.

By Mr. Houpt:

Q. These expenses were made under your leases for the protection of your interests in those mines?

A. They were made on account of the inspection work.

Q. You have a charge for analysis, that was for analyses of the ore?

A. For analyses of samples that were taken during the inspection work.

Q. Under these leases do the royalties vary according to the richness or the leanness of the ore?

A. The royalties are a flat royalty in every case.

Q. What was the purpose of making the analyses then?

A. To determine whether the ore would be merchantable or non-merchantable.

Q. Whether it should be mined?

A. Whether we could insist upon its being mined, or whether it should be wasted.

Q. If below a certain percentage it is wasted, and if above it is considered merchantable?

A. Yes, when it was merchantable it must not be wasted. When the ore becomes merchantable we insist upon their conserving it if it can be done according to good engineer-

131 ing methods.

Q. So that in order that you would derive all the revenue that you thought you were entitled to in these mines, it was necessary for you to be exercising constant supervision over the mines?

A. We think so. It is customary I think.

Q. You did it?

A. We did, we carried on this inspection work.

Q. You maintained an office at Hibbing?

A. No, we had no office at Hibbing.

Q. Why is there an item of office rent?

A. It is for the office at Hibbing in proportion to the various properties that are inspected.

Q. You have got it charged as an item of expense.

A. The Meriden Iron Company makes up the bills, and it is itemized in the various expenses of the office, rent, superintendence, etc.

Q. In other words, the Meriden Iron Company maintains an office there?

A. Yes, sir, and the expense is distributed over a good many outside interests and other companies.

Q. And you pay your proportion? A. Yes, sir.

Mr. Van Derlip: These items with reference to the Hibbing office are not rent at all, it is Hibbing office expenses.

Witness: It is not charged as rent, it has not been so testified.

Q. There was a charge made against the company on account of occupancy of the building in which the Meriden Iron Company did business.

A. That is my understanding of it. I don't see
132 any items here for rent.

Q. I understood you to say that in the itemized monthly disbursements you included such an item.

A. I think that must be a mistake, because I don't find it in these statements.

The Court: It was office expenses.

Q. At Hibbing. A. Yes, sir, at Hibbing.

Mr. Van Derlip: I will put Mr. Warren on the stand, and he will explain fully about that.

Q. Items are charged against the Monroe mine, I suppose they are the same class of charges?

A. They are of the same general character.

Q. Of the same nature, yes, sir.

Redirect Examination

By Mr. Van Derlip:

Q. With reference to this testimony which you have been giving relating to general expense items of these three companies, the items which you have detailed here from month to month making up these charges, were read by you from the original bills rendered to you by the Meriden Iron Company for that work. A. They were.

Q. It was a memorandum which you had before you with respect to each month?

A. Bills rendered by the Meriden Iron Company to the Kearsage and Sargent Companies.

Q. You said that the Meriden Iron Company rendered each month to these companies a bill for all services per-
133 formed during the preceding month, whether it is greater or smaller, for the month.

A. That is correct.

Q. Counsel asked you yesterday in relation particularly to the Longyear mine so called, as to whether the income or the receipts on the lease of that mine represented the royalty upon ore removed and shipped, or whether they were advance royalties. You testified that they were advance royalties.

A. Yes, sir.

Q. What are the operations on the Longyear mine, what is the nature of the property as to the manner in which the lessee is endeavoring to mine the ore?

A. The Longyear mine is a stripping mine, so called.

Q. What do you mean by a stripping mine?

A. Where the surface is not too great in depth to warrant the expense of removing it by steam shovels, so as to expose the ore underneath; enabling the operator, after such removal of the overburden and the laying of a railroad track into the mine, to mine the ore with a steam shovel.

Q. From the ore exposed in the mine? A. Yes, sir.

Q. That is a stripping proposition?

A. Yes, sir, a stripping and steam shovel proposition.

Q. Was that Longyear mine of that character?

A. Yes, sir.

Q. During these years 1909, 1910 and 1911 in which these royalties have been paid, has the lessee been conducting that work?

A. The lessee has been conducting stripping operations. That is, removing this overburden, and getting ready to
134 mine, so that the ore can be mined out.

Q. In the manner in which you testified? A. Yes, sir.

Q. Is that an operation of some magnitude and duration?

A. It is of considerable magnitude. I don't remember the amount involved, but it will be a large stripping mine.

Q. But during these three years the lessee has been engaged in that stripping operation, so as to enable it to get this ore?

A. I think so. I am not entirely clear as to when this stripping operation commenced, but they have been carrying it on for some years past.

Q. In connection with that you testified that the minimum royalty or advance payment for each year amounted to $18,750. Did the company receive the full amount, or was 3% deducted from that by Mr. Longyear.

A. I think 3% was paid directly to Mr. Longyear.

Q. The $18,750 was the total advance royalty?

A. Yes, sir.

Q. Regarding the Alexander mine, it appears that the lease upon that property existing at the time these lands were conveyed to the plaintiffs was surrendered, I believe in 1908, and subsequently a lease was made in 1910 to the Oliver Mining Company. Will you please explain the nature of that property at the time of the surrender, and the reason for making the lease?

A. The original lease was made to the Republic Iron and Steel Company. They mined out what they claimed was all of the ore in the mine, and surrendered the lease. The
135 Platt Iron Company held a lease of the Forest Mine, which is in the same ore body, and lies contiguous to the Alexander mine on the east. The Platt Iron Mine Company desired to have a lease of the Alexander mine, and thought they could scram out some ore.

Q. What do you mean by scram out?

A. Scramming out a mine is where the mine has been pretty well exhausted and a concern comes along and gets out all that is left. It is usually done by very small operators, and sometimes by the miners themselves. They could do this, because they were operating the Forest mine and had their plant there. There was considerable water in both the Alexander and the Forest mine, and they had their pumps there, and they could keep the water out until they got what little ore there was in the Alexander. I wish to correct my testimony of yesterday that the Platt mine did not mine the ore; I think they did. It was a cash lease of $1200, and there was something like 1600 tons mined out by the Platt Company. That is all there was to it. Then they allowed the mine to fill up.

Q. Then this lease to the Platt Company was for the purpose of scramming out the ore?

A. Yes, what was left.

Q. It was to get the ore that was left?

A. Yes, it was scrammed out. The ore was lying just in small pockets, and the other company did not consider it worth taking out.

Q. If such a lease had not been made at that time, under those conditions, would not that $1200 and the ore have been wasted and lost to the plaintiffs?

136 A. Absolutely. We had no means of getting it out. We were not organized to get it out. The mine filled up immediately after the pumps were stopped in the Forest mine, and the pits filled up with water. The water was high in the pit and it was used as a reservoir.

Q. Something was asked you on cross-examination concerning the Monroe mine, and the advance royalties; what was the situation of that mine? A. In [waht] way?

Q. As to whether ore was taken out or not during those years.

A. There was; there was a very little taken out. There seems to have been only a very small amount of ore taken out of the mine.

Q. I don't refer to the ore that was shipped; I am asking you whether ore was mined and removed without being shipped. In other words whether it has been stock piled by the pit.

A. They have been mining ore for several years from the Monroe mine; they had made quite a stock pile.

Q. What do you mean by a stock pile?

A. A stock pile is where the ore is mined out underground and piled up on the surface of the land contiguous to the shaft. That ore is then in the stock pile, and, from time to time, as they desire to ship it, they put in steam shovels and load the ore into cars and then it is shipped.

The Court: When are the royalties paid in such a case?

Witness: Not until the ore is shipped. Not until it is removed from the premises. We would remove the ore to
137 wash it. The royalties are not due until the ore is removed.

Q. That washing provision does not apply to any of the leases referred to here?

A. Not at all. There is no washing property.

Q. What is the fact as to whether the Monroe mine was piling ore?

A. They have been operating during 1909 and 1910 in stock piling.

Q. What is the fact with respect to the application of this advance royalty towards the payment for ore in stock pile?

A. These advance royalty payments were made to us, and in future years ore can be [be] mined and shipped, and the credit which we give to our lessees makes it so that these payments can be used and applied in payment for that ore which is in excess of the annual minimum royalty payments for that year.

Q. In other words, in these cases, the royalty payments are precisely what the name implies, that is, they are payments in advance for ore? The lessee has a credit therefor when the ore is mined and shipped, and when so paid for, it does not have to be paid for the second time?

A. That is true. That statement is correct.

Q. I want to speak about the agency of E. J. Longyear, or, as you have said, the E. J. Longyear Company, for the sale of certain of these platted lots. Those plats, it already appears in evidence were made by the individual owners of that property before they were conveyed to the plaintiff corporations. You were, were you not, at the time these plats were made, one of those individual owners? A. I was.

138 Q. You are familiar with the facts surrounding the making of these plats? A. I am, yes.

Q. Can you state when the arrangement was made with E. J. Longyear with respect to his agency for the sale of these lots, do you know when that arrangement was made?

A. The arrangement was made, Mr. Longyear would keep track of the development of the Missabi range, and had full opportunity for observations of that kind. If he saw a good location for a town site or addition to a town site, he would come to us or he would come to other people and arrange to plat that ground; that is, do the engineering work and look after it, in consideration of his having the exclusive sale and disposition of the land, on a commission basis.

Q. Is it or is it not a fact that with respect to these platted additions of any one of the plaintiff corporations, Mr. Longyear was instrumental in causing the platting and did the platting himself with the exclusive agency for the sale of the lots contained therein? A. He was in each case.

Q. Were those arrangements made in every case prior to the transfer of the properties to the plaintiff corporations?

A. Yes.

Mr. Houpt: We object to this, as being contrary to the minutes of the board of directors put into this record.

The Court: I think there was only one plat, the Pearce addition, made after 1899. I will overrule the objection.

Q. In respect to the Pearce Addition to which reference was made and as to which you were cross-examined this

139 morning, in order that there may be no misunderstanding and no ambiguity in the record, will you state the circumstances with respect to that?

A. The Pearce 40 is the 40 acres on which the Pearce mine is located. The ore was about exhausted in the Pearce mine, and it was intended to plat that 40 into town lots. Some exploration work was done, some test pitting, to determine whether there was a little edge of the Clark mine extending over on to this 40. The work was done and nothing was found, and so steps were taken by the E. J. Longyear Company to plat the 40. A survey was made, I think, but the

village of Chisholm, the village council, refused to accept the plat, as there had been some addition platted on the north. There was some political influence brought to bear to prevent the acceptance of the plat, and the matter was dropped.

Q. The land was never platted?

A. No, sir, it was never platted.

Q. Is it still owned by the plaintiffs?

A. No, sir, it was transferred to the Meriden Iron Company.

Q. Counsel has had you read one or two portions from the records of these corporations relating to a certain street railway company. I wish you would explain to the court about that street railway company.

A. There wa. a street railway company organized to establish a line along the range, and they wanted to cross over some lands that we owned to get a right of way. We appointed a committee to consult with them to see where their line was going to run, and whether it was where we wanted it.

140 Q. What was the result of that?

A. I think we gave them the right of way over two or three pieces [pieces].

Q. That's all there is about the street railway?

A. That's all.

Q. That is, you gave them an easement for a right of way?

A. Yes, sir, that is our custom.

Q. You spoke yesterday, and you have again this morning, about the custom of the plaintiffs to declare dividends, so called, of the receipts of the corporations from time to time. As I recall it, you made some statement to the court with regard to dividends; I am not sure whether you have testified with regard to them so that they are in the record. Explain why the term dividends was used, and what as a matter of fact it means.

Mr. Houpt: I believe the witness has testified upon that point.

The Court: I dont' think he has testified as to what the word means.

A. Well, the word was used because it is customarily used as a term to designate the paying out of the money that has been received from the sale and disposition of the assets of the company.

Q. As a matter of fact, the dividends you have referred to in the record are no other than the distribution of the proceeds of sales the property and ore?

A. That was the only source of revenue of these corporations, the selling and disposition of its property, the declara-

tion of dividends of the proceeds as fast as we received
141 them, keeping a very small balance from month to month, or from quarter to quarter to pay our running expenses.

Q. If one be the owner of ore in place on the Missabi Range, what is the means of disposition of that, how is ore sold on the Missabi Range?

A. It is sold under a so called lease.

Objected to.

Objection overruled.

Witness: The customary way is to sell the ore by lease, such as these leases that we have here, paying a royalty rate, a fixed royalty, not on a sliding scale, that is not used on the Missabi Range. But a fixed royalty rate, based on so many tons of ore being paid for to you each year, whether the ore is mined or not. So there is an assured amount paid each year.

Q. To prevent the lessee from tying up the property of the lessor is it?

A. Yes, sir; otherwise it might be tied up a good many years without any returns.

Q. Is there any other practicable way of disposing of the ore by the owner of ore on the Missabi Range, except on a mining lease?

Mr. Houpt: That is objected to as immaterial and as calling for the conclusion of the witness, and for the reason that the transaction is fixed in these cases by the leases.

The Court overrules the objection, and counsel for defendant excepts to the ruling.

A. There have been cases where the ore has been sold outright; but the sale price would have to be so reduced,
142 that it is a very rare exception where property is disposed of ore is sold in a lump sum.

The Court: Do you mean the land or the ore?

Witness: The land. Sometimes the ore is sold, but it is sold in a lump payment. But that is very unusual. I don't know of more than one or two cases in my experience.

Q. In the history of the Missabi Range?

A. Yes, sir.

Q. Then as I understand you, such a sale is made only by making a great sacrifice of the property.

A. Yes, sir. The Oliver Iron mine prefers to pay a higher royalty, and makes a considerable higher royalty rate for ore under this leasing plan with payments each year, rather than purchase the fechold at a comparatively low figure.

Q. Rather than to pay out a very large sum to begin with?

A. It enables them to make payments as they market their product.

Q. What you have stated has been true with respect to the mode of disposing of the ore from a time previous to the organization of these plaintiff corporations?

A. That is the only method we have employed. It is the universal custom.

Q. You wanted to correct your testimony yesterday in respect to these licenses that have been given for occupancy of the surface of the land in Hibbing and one or two places, in relation to their renewal each year.

A. I stated that they were renewed each year and new licenses made or issued. I understand from Mr. Warren who has been looking after these things, that they were renewed automatically: that is, we give notice of their termination and they were renewed automatically from year to year.

143

Q. Let me call your attention to the lease of certain property in the village of Hibbing for which your rental receipts were approximately something like $240 a year. Will you describe the situation of that property, and the reason for [giveing] a license.

A. Pillsbury Addition to Hibbing is partially underlaid with ore. We owned the surface, and we owned the ore. That land was platted, and a portion of the lots was reserved for the uses and purposes of mining out the ore, so that on the surface they can sink a shaft etc. These lots have been reserved. In the village of Hibbing land is very scarce. The whole town is surrounded by open pits that have been made until they are all up against the town property on three sides. The result is that there is a great pressure to obtain business sites suitable for warehouses, and trackage for lumber yards and so forth. We have made it a rule, where we didn't need this land, to give licenses on it at what we considered a nominal valuation. That is, ordinarily we have based our valuation at from 50 to 75% less than what the lots are worth. In fact, we could sell the lots for a large sum of money. This has been done to aid the people of Hibbing. We have issued licenses to the school district for half a block on which there is a large school building. We receive no rental for that. They pay the taxes. We have issued some licenses for park purposes for which we receive nothing. Through the town there is a railroad, and we have issued licenses.

144

Q. Do you receive any rental for that?

A. No, sir. We have issued licenses on 50 or 60 acres which lie south of the village limits of Hibbing that we receive nothing for. We found it was public policy to permit this use. We

have not issued these licenses for the purpose of receiving revenue. We could get a good deal more than that if we desired.

Q. So that these sums that you are receiving as rentals are much below the real value of the rentals?

A. Yes, sir. There is another thing. Squatters will come to you for land to build shacks on, and if you have a licence out they will look after these squatters.

Q. Now in order to make it perfectly clear on the record with respect to these dividends, I desire to call your attention to a meeting of the directors of the Sutton Land Company on April 30th, 1909, appearing on page 63, and ask you to read the paragraph appearing on that page relating to dividends.

A. "The treasurer then presented his report in detail for the months of February, March and April, showing total receipts including balance on hand January 30, 1909 of $7,730, disbursements of $528.30, leaving in the hands of the treasurer $7,201.70. Mr. R. M. Bennett moved that a dividend of $2.75 aggregating $5940 be declared payable immediately. The motion was duly carried, leaving in the hands of the treasurer $1,261.70".

145 Q. Is the form which you have just read the form which is used regularly by the Sutton and by the other plaintiff corporations in declaring these so called dividends?

A. It is, I think, without exception.

Q. In each case the treasurer reports receipts for the preceding period, whether it be a month or a quarter, and thereupon the dividend resolution follows: is that right?

A. Yes, that is correct.

Q. The receipts disclosed in these reports of the treasurer at the meetings represent what?

A. They represent moneys that have ben paid into the treasury of the company from the liquidation of its assets.

Q. Anything else? A. Nothing else.

Mr. Van Derlip: I am going to offer in evidence one of these leases, so that the record will show what the form of the leases is, that is, as to its general terms.

Q. With the exception of the Van Buren Iron Mining Company lease, will you state whether or not all the other leases that have been referred to in these cases follow a single general form. A. They are all in substantially the same form.

Q. The differences between the leases being in the description of the parties and the property, and the amount of royalty to be paid for the ore mined and removed, to a very large extent? A. Yes, there may be some minor differences.

Q. But, [isn-t] it true, speaking generally, that the
146 leases all follow a specified form that is used on the Missabi Range?

[Q.] Yes, sir, the specified form that is used on the Missabi Range, they were used right along.

Mr. Van Derlip: I will ask to have marked as Exhibit 15 an indenture or lease dated March 1, 1912, between Frank H. Carleton and others being the then owners of the premises, and John B. Adams as lessee, and I offer it in evidence.

The Court: It is admitted.

Q. I show you Exhibit 15, and ask you if that shows the general form of the leases to which you have referred in your testimony.

A. It is. It is one of our forms of lease.

Q. And the terms and conditions of that lease with respect to the rights and obligations of the lessors and lessee, are the same terms and conditions as attach to these parties under these leases, with the possible exception of the Van Buren lease?

A. That is correct.

Mr. Van Derlip also produces and offers in evidence another lease, between Sargent Land Company, as lessor, and Van Buren Mining Co., as lessee, which is marked Exhibit 16 hereof and is received without objection.

Mr. Van Derlip: For the fullest information, I desire to offer in evidence a copy of the by-laws of the Sargent Land Company.

The same is marked Exhibit 17 hereof and received without objection.

147 Q. I will ask the witness whether the by-laws in each of the plaintiff corporations are identical in form.

A. The by-laws of the three plaintiff companies are identical in form.

Q. Then this copy or the by-laws of the Sargent Land Company, with the exception of the name, is precisely the same as the by-laws of the Sutton Land Company, and of the Kearsage Land Company. A. It is.

Q. I believe that is all, unless there is any explanation which you desire to make, or something to which you desire to call our attention.

A. Mr. Warren will be on the stand?

Q. Yes. A. Then there is nothing.

148 O. B. WARREN, a witness produced and sworn on behalf of the plaintiffs, testifies as follows:

Examination-in-Chief

By Mr. Van Derlip:

Q. Where do you reside? A. Hibbing.

Q. How long have you lived there? A. Seventeen years.

Q. Are you connected with the Meriden Iron Company?

A. I am.

Q. In what capacity? A. Manager.

Q. How long have you been manager of that company?

A. Since it was formed. At first my title was superintendent of mines, but it has been changed to manager.

Q. What is your profession? A. Mining Engineer.

Q. That is the same Meriden Iron Company that has been referred to by the witnesses for the plaintiffs in this case?

A. It is.

Q. And you are the same O. B. Warren who has been referred to in the testimony of these witnesses? A. Yes, sir.

Q. You have heard the testimony in this case? A. Yes, sir.

Q. Does the Meriden Iron Company make and file with the Collector of Internal Revenue for the district of Minnesota, a report of its annual income under the Corporation Tax in each year? A. It does.

Q. Has it done so for each year since the act has been in effect? A. Yes, sir.

Q. Has it paid the taxes assessed against it under that
149 act? A. Yes, sir.

Q. Does the income so reported from year to year of the Meriden Iron Company include the receipts by it from the Sargent, Sutton and Kearsage Land Companies during the respective years covered by the report.

Objected to.

Objection sustained.

Plaintiffs except.

Q. What is the business of the Meriden Iron Company?

A. Mining ore, the inspection of ore properties, engineering, inspection of mineral properties anywhere of iron ore propertes.

Q. Iron ore properties? A. Yes, sir.

Q, Are the operations of the company confined to any one locality? A. No, sir.

Q. What range of territory do you cover in your operations?

A. The Messaba Range, the Vermillion Range, the Marquette Range, Crystal Falls, Menomonie.

Q. The Messaba and Vermillion ranges are in Minnesota?
A. Yes, sir.
[—] The Marquette and the Crystal Falls are in Michigan?
A. Yes.
Q. The Meriden Iron Company is now operating at Menomonie in Wisconsin? A. Yes, sir.
Q. Did you do business there?
A. I have personally, but not for the Meriden Iron Company.
Q. Have they at any time done business on the Cascade Iron Range, in that part of the Menomonie Range?
A. Yes, sir.
150 [—] Are you familiar with the bills that are charged from month to month by the Meriden Iron Company and sent out to its patrons, including the plaintiffs?
A. I am.
Q. In your operations on these various ranges do you do business for other companies than the plaintiff companies?
A. Yes, sir.
Q. Or for other individuals? A. Yes, sir.
Q. In the bills which you have rendered to the plaintiff companies, from which Mr. Bennett testified this morning, what does the item "[Superint-ndence], O. B. Warren, "mean?
A. It covers actual salary, the Meriden Company's profit, and such costs as go to the superintendence, aside from office expenses and travelling expenses.
Q. Attention was directed to the item of "Hibbing office expenses" in these bills included in the amounts paid by the plaintiff corporations from month to month; please explain that item.
A. The item of Hibbing office expenses covered the general clerical work, general stenographers' work, general telephone, not telegraph, but telephone, janitor's services, and all such minor expenses in the office, including the Meriden Company's profit.
Q. Do you render bills of the same character, itemized in that same general way, to all of your patrons? A. Yes, sir.
Q. Will you explain to the court the purpose of making your bills in that rather unusual way.
A. The purpose is to save clerical work, and keep a permanent systematical form. I might add in addition, that that being the general form, we furnish itemized statements to
151 all who care to have them.
Q. All the items making up these different amounts in the bills? A. Yes, sir.

Q. Upon the face of it it might appear that you were rendering bills for the exact cost of all these items; what is the fact as to that?

A. The fact is that we have a regular basis of charges. We include the actual cost, the Meriden Company's profit is in that.

Q. Is it or is it not true that in each of these items as shown from the bills rendered by you to the plaintiffs and other parties, the actual amount in each of these items represents the actual cost with the profit referred to added? A. Yes, sir.

Q. Then, as I understand your testimony, the fact is that the amounts paid by the plaintiff corporations to the Meriden Iron Company, from month to month, represent not merely the exact cost of the work, but represent the exact cost of the work plus your percentage of profit, whatever that may be, as agreed upon. A. Yes, sir.

Q. Are these bills as presented by the Meriden Company from month to month paid by the plaintiff corporations?

A. They are.

Q. What becomes of the funds so received?

[Q.] They are turned into the Meriden Iron Company.

152 Q. Beyond the fact of a community of interest, so to speak, between the stockholders of the plaintiff corporation and the stockholders of the Meriden Iron Company, is there any difference between the connection of the Meriden Iron Company with the plaintiffs and with any other of its patrons?

A. Not any, with what we call regular patrons. Not any difference with the Kearsage Land Company and the other plaintiff corporations and the corporations that we are retained by, and whom we represent regularly; but we do have some occasional patrons whom we charge more for our services; perhaps one or two days' work rendered in the course of two or three years. Of course we have to charge more to these special patrons.

Q. Is the nature of the business of the Meriden Company such that the greater part of its services are rendered regularly for its patrons, in respect to properties in which they are respectively interested? A. Yes, sir.

Q. As regards these patrons, as I understand you, the profit you speak of is not so large as from these occasional patrons who ask you to do an isolated job taking a day or two? Do I understand you correctly?

A. That is the correct understanding.

Q. When an item is entered against these plaintiffs of a charge for "superintendence by O. B. Warren," does that not

indicate that the service, so far as the plaintiff corporations are concerned, is the service of the Meriden Iron Company?

A. It does.

153 Q. The use of the words, O. B. Warren, or O. B. Warren Superintendent for a charge of superintendence, is intended merely to indicate that you have given it personal attention?

A. It covers my personal attention. We often render bills in which there is no charge for superintendence, as in inspection of taxes, where the charge would be for special clerical work.

Q. From whom do you receive your compensation?

A. From the Meriden Iron Company.

Q. Are you in the employ, in any capacity, of any one of the plaintiff corporations? A. No, sir.

No cross-examination.

R. M. Bennett, recalled on behalf of the plaintiffs, testifies as follows:

Examined by Mr. Van Derlip:

Q. I want to ask you [wirh] reference to the resolution which Mr. Houpt asked you to read, appearing in the minutes of the directors' meeting of May 27, 1909, which is found on pages 61 and 62. That resolution refers generally in its recital to an existing contract between the Kearsage Land Company and the Oliver Mining Company relative to the

154 mode of operation by the Oliver Mining Company in the Glen mine so called. In the course of these recitals, or in the second resolution, I find this language: "Resolved further, that the Kearsage Land Company expresses its unqualified endorsement of the competent and thorough manner in which Mr. O. B. Warren has conducted his supervision of the Glen Mine and regrets that the Oliver Mining Company has felt that there has been any occasion for any criticism of his methods. Resolved further that this resolution be spread upon the minutes of this meeting, and that a copy thereof be mailed by the secretary to the Oliver Mining Company and to Mr. O. B. Warren."

I also find in the third recital of the preamble to these resolutions, this: "Whereas the Kearsage Land Company has employed Mr. O. B. Warrem as its general superintendent, and has instructed him to carefully inspect the mining operations being carried on by the Oliver Mining Company in the Glen

mine, and to require the lessee to mine all ore assaying 45% or over in metallic iron, wherever by the mining operation of ore of that grade, if not mined when the ore containing 57% and upwards of metallic iron is mined, will be left 'unreasonably inconvenient for the future mining thereof, etc." And then further along, "Whereas pursuant to his instructions Mr. Warren has required the Oliver Mining Company to mine and ship, and to conserve for the future benefit of itself, or of the fee owner, this overlying stratum of low grade ore"
155 which is the ore referred to previously. Now I direct your attention to these, to inquire why Mr. Warren's name was used in these resolutions rather than the name of the Meriden Iron Company.

Mr. Houpt: That is objected to, as contradictory of the record made by the corporation, and as tending to impeach that record.

The Court overrules the objection, and counsel for the defendant excepts to the ruling.

A. At the time that this disagreement arose we had some correspondence, and finally we had a meeting, at which Mr. Snyder, Mr. Warren and myself were present and the officers of the Oliver Mining Company. At that meeting this matter was taken up and discussed. The officials of the Oliver Mining Company, and Mr. Olcott especially, rather discredited Mr. Warren's methods, claiming that he was unfair in his attitude. We at that meeting agreed upon this settlement, as stated in these resolutions; that is, to allow them to cave the ore in this particular instance, and we drew up resolutions. It was decided that in order to get on the record, to back up Mr. Warren, that we would pass such resolutions as these, in order to make the matter stronger. That is, instead of using the name of the Meriden Iron Company which would be impersonal, we used Mr. Warren's name, in order to back him up in this attitude which he had taken in the inspec-
156 of that property. That was the idea at that time. Mr. Warren was employed by the Meriden Iron Company at that time just as he always had been.

Mr. Van Derlip: I do not know whether it is necessary that we should offer in evidence the Articles of Incorporation of these plaintiff companies. They are made a part of the complaint.

Mr. Houpt: They are admitted to be in the form shown by the complaint.

Q. In speaking of the lease made by the Sargent Land Company in the year 1910 to the Platt Iron Company, which is known as the Alexander mine, you stated that the ore was left to be scrammed out of the mine, and that it was not taken out by the Sargent Company because it was not organized so it could do it. Will you please state what you meant by the expression that the company "was not organized so that it could do it"?

A. The articles of incorporation of the Sargent Land Company had been amended in 1909, which would not permit us to engage in mining [oparations]. The only way to save the ore that was there was to make a lease of it.

Q. That was the signification [whuch] you intended with reference to the term "organized"?

A. That is what I meant, that we were not permitted to do the business.

Q. You did not refer to the fact that the Sargent Company had no facilities by way of employment of engineers?

A. No.

Q. One other question. In 1909, 1910 and1911 it appears that the Sutton Land Company sold some hardwood timber in various small amounts. What was the particular
157 circumstance which led to the sale of that timber?

A. Fires had got in at the time of the Chisholm fire, at the time the town of Chisholm burned. Fires had burned over the range for a succession of years, and fire had burned over this particular timber. We had the timber examined occasionally for the purpose of disposing of it, to see what there was of it. We found that this timber had been burned in certain localities. It was so that if we had not disposed of it it would have [eebn] been worthless in a year or two.

Q. That is the timber that you testified was sold?

A. Yes, sir, the timber was sold under those circumstances.

Cross-Examination

By Mr. Houpt:

Q. What was the object of amending the articles of incorporation?

Mr. Van Derlip: That is objected to, because the record shows for itself. It recites particularly the purposes for which the alteration was made.

The Court: I will sustain the objection.

Q. Was the object of amending the articles of incorporation so as to escape liability under the corporation tax?

Mr. Van Derlip: That is objected to as immaterial and incompetent.

The Court sustains the objection.

Q. [It] selling that timber after it being burned, you proceeded just as any timber land owner would have done, did you not?

158 A. We found that fires had run through this timber, and if it remained for any length of time without being cut, it wouldn't be worth anything.

Q. Any land owner would have [dome] the same thing, either would have sold the timber or cut it himself?

A. I presume so.

Q. Is it not a rule among timber people or owners of timber, that when fires have been through it, in order to save it, they either sell it or cut it themselves?

A. Yes, sir, they dispose of it or cut it.

Q. You were proceeding on sound business principles when you did that.

A. We proceeded upon the theory that if it remained there it wouldn't be worth anything.

Q. Then it was sound business principles that actuated your conduct, was it not?

The Court: I will rule that out.

Mr. Van Derlip: With respect to the amendment to the articles of incorporation, while I think the resolution itself was offered, I will offer specifically in evidence the record of the meeting of the Sargent Land Company on December 22, 1909, as found on pages 170 and 171 of the record, and I will read that resolution.

Mr. Houpt: I object to the reading of the resolution with the view of showing what the purpose of that amendment was, because it appears from the testimony of Mr. Bennett that the minutes of the meeting of the board of directors did not

159 mean what they said upon their face, and therefore are not reliable.

The Court overrules the objection, and counsel for defendant excepts to the ruling.

Mr. Van Derlip then reads as follows:

"Upon motion of Mr. Van Derlip seconded by Mr. John Pillsbury, the following preambles and resolutions were adopted by the unanimous vote of all the [shoreholders] and of all the shares of stock present and represented:

'Whereas the Sargent Land Company is a corporation which was created with the object of bringing into one ownership the numerous undivided fractional interests in certain lands in the State of Minnesota held by the various persons (having widely separated domiciles) now constituting its stockholders, many of whom were minors and were unable to execute valid instruments relating to such lands, and whereas the corporation has acquired such undivided interests and now holds the record title to said lands, and is enabled to manage and control the same for the benefit of its stockholders—former owners thereof—conveniently and [eco-mically]; and whereas it is desirable that the articles of incorporation of said Land Company should express with complete accuracy the purpose and scope of its organization, and the nature of its title to and ownership of said lands; Resolved"—

Mr. Van Derlip: Then follows the resolution which has been already produced in evidence. I now offer in evidence from the record book of the Kearsage Land Company that portion
160 of the record of the meeting of the stockholders on December 22, 1909, found upon pages 71 and 72 of that record book, in precisely the same language as I have read. From the record book of the Sutton Land Company I offer in evidence that portion of the record of the meeting of [th-] stockholders of that corporation on December 22, 1909, found upon pages 68 and 69, in precisely the same language as that which I have read from the record of the Sargent Land Company.

The Exhibits heretofore produced by plaintiffs, being numbered 1 to 17 inclusive are received in evidence without objection, save where the same have been specifically objected to, as appears in the record herein.

Plaintiffs rest.

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161 (Testimony for Defendant.)

GEORGE W. SCOULER, a witness produced and sworn on the part of the defendant, testifies as follows:

Examination-in-Chief

By Mr. Houpt:

Q. Where do you live? A. I live in Pennsylvania.
Q. You are in the government service?
A. I am an Internal Revenue agent.

Q. Did you have anything to do with making up the accounts of these three corporations, for the purpose of assessing a tax against them?

A. An Abstract from the returns filed by these three companies was furnished me, with instructions to examine the books and see that a return was prepared accordingly.
In the case of the Sargent company the Kearsage company and the Sutton company I visited the office in Minneapolis last December.

Q. Did you receive your instructions from the Commissioner of Internal Revenue?

A. He sends on an abstract showing the figures which were furnished by the companies.

Q. You may state in what manner you prepared the account of the Sargent company for assessment and tax for the year 1909.

A. I examined the books of the company, and found 1910, based upon that examination, the gross income was $395,732.90. Then they were entitled to deductions for the necessary maintenance of the business $5,458.83, and for taxes paid
162 $540.38, making a total of $5,999.21, leaving as net income $389,733.69, then making the specific deduction of $5,000, that left as taxable income $384,733.69. I prepared a regular form of property return, and forwarded that. That was the basis of it, and these were the figures on which the assessment was made.

Q. Was there any other deduction made on account of 3%?

A. I can give you the detail of these figures if you want them.

Q. Was that deduction made?

A. I found the gross income so much less the percentage, and the land sales.

The Court: This 3% commission of Mr. Longyear's was taken out?

Witness: Yes, sir, it was taken out.

Q. Did the land sales you spoke of form a part of the gross income? A. Yes.

The Court: Was that true of all the years?

Witness: I might say that the figures furnished—

The Court: I am asking you whether or not the proceeds [off] the land sales formed a part of the gross income.

Q. Was that true also of the stumpage?

A. Yes, sir; the gross income consisted of advance royalties advance sales, specific sales of other lands, interest, discount and rents. Then in 1911 I found gross income $500,741.64, deductions for expenses and taxes amounted to $4,121.47, leaving $496,620.17, and deducting $5,000, left for taxable in-
163 come $491,620.17. I also made a return for the year 1909 in the same manner. That year had been overlooked, and I called the attention of the company to it, that they should file a return for the year 1909. The figures I found from the books for 1909 showed gross income $279,510.22, with deductions for expenses $7,661.67, taxes $488.51, total $8,150.18, making net income $271,360.04, deducting $5,000 it left as taxable income $266,360.04. This is for the three years.

Q. In each instance the 3% commission of Mr. Longyear was deducted. A. Yes, sir.

Q. Were any penalties added to these figures?

A. I believe that 50% was added to these figures for failure to make a return as required by law.

Q. Now as to the Kearsage.

A. 1909, gross income 123,102.42 [-xpenses] $12,729.58. Taxes $61.97, total deduction $12,791.55, net income $110,310.87, deducting $5,000 left as taxable income $105,310.87. For the year 1910 I reported gross income $131,592.48, expenses $8,068.79, taxes $65.86, total deductions $8,134.65; net income $123,457.83, deducting $5,000, leaves as taxable income $118,457.83. For the year 1911, gross income $146,607.45, expenses $7,241.33, taxes $69.25, [totoal] deduction $7,310.58, net income $139,296.87, specific deduction $5,000, taxable income $134,296.87.

Q. Now for the Sutton Land Company.

A. For the year 1909 gross income $25,740.00; Expenses
164 [$1508.8.;] Taxes $439.34. Total deductions $1,948.15. Net income $23,791.85. Specific deduction of $5,000. taxable income, $18,791.85. For the year 1910, Gross income $24,820, expenses $1829.07. Taxes $456.76. Total deductions $2,285.83; net income $22,534.17; [specicfic] deduction $5,000 leaves taxable income $17,534.17. For the year 1911 Gross income $24,750; expenses $1,736.93, Taxes paid $370.57 total deduction $2,107.50. Net income $22.642.50, specific deduction $5,000 taxable income $17,642.50. Those are the figures I took from the books, as shown by the lease account.

Q. The deductions you made in all these cases were 3% commission of Mr. Longyear. A. Yes, sir.

Q. Did you find upon the books of either of the plaintiff companies any claim for depreciation?

A. Nothing on the books at all.

Q. There was no depreciation charged on the books?

A. No, sir.

Cross-Examination

By Mr. Van Derlip:

Q. You are an expert accountant?

A. I believe so, yes, sir. It is rather a broad question, but in this particular line I claim to be an expert.

Q. I understood you to say that from your examination of the books you made out an account in proper form in connection with the figures which you have given us.

A. Yes.

165 Q. And you returned that to the Commissioner in Washington?

A. I prepared a corrected return which was filed with Mr. McGinnis the chief in charge, and he forwarded it to Washington.

Q. The corrected return [whi-h] you say you prepared, what became of that?

A. It was forwarded to the Commissioner with all the data, so he could pass upon the merits of the case.

Q. That return was accepted by the Commissioner in lien of the return made by the plaintiffs, and the tax was based upon the return made by you?

A. Yes, sir. You based your original return showing no income. They all showed a deficit, so there could be no taxable income.

Q. The difference between the return made by you and that made by the plaintiff companies was the item of depreciation for ore sold in mining the property.

A. Your income was offset by depreciation to that extent that it covered all the receipts, no matter from what source.

Q. But the depreciation from your examination of the books, was from ore sold under mining leases.

A. No, sir. There was nothing in the books at all. No claim was made other than the original return.

Q. From your examination of the books, and your examination of the returns as filed by the plaintiff corporations, were you able to determine what composed the item of depreciation, as it appeared in the return filed by the plaintiffs?

A. The only thing I could gather from that was from
166 conversations I had with Mr. Bennett and Mr. Snyder, which is part of the report as far as the claim goes.

Q. [Isn-t] it a fact that the amounts specified in the returns filed by the plaintiff companies coincide precisely with the amounts of the ore sold under these leases?

A. No. You included your lands and some of your interest. You included everything and showed a deficit.

Q. Did not the figures for ore sold and for lots sold agree with the aggregate amount of depreciation made in the returns filed by the plaintiffs?

A. What particular company would you like to have?

Q. Please answer my question.

A. In a general way, no. In 1910 the original return as filed by your company showed $131,592.93.

Q. What did your examination produce?

A. $131,592.48. That difference is in the taxes, I made them a little less. You claimed under your original return a depreciation of that precise amount. In making up the Glen mine royalty return and the Monroe Advance payments interest and discount were included for that particular year. I believe it was called interest and discount. It was interest received.

Q. There will be a deficit whether the depreciation amounts to more than the income or not. But, isn't it a fact, speaking broadly, that the difference between the account which you claim is correct, the account made up by you, and the
167 account filed by the companies for the same year, is in the amount claimed by the companies to be allowed for depreciation, consisting of the amounts received by them on account of ore sold, on account of lots sold, and in some cases on account of timber sold? A. In some cases that is possible.

Q. But speaking generally, the difference between your account and theirs was that they claimed for depreciation of the property, on account of sales of ores sales of lots and sales of timber.

A. The difference between the original and the other return is the claim for depreciation.

Q. If the company sold lots or sold acres the assets would be decreased in that amount in any year, would they not?

The Court: I think I will decide that myself. I do not think that it is a question for the witness to determine.

Q. Is it or is it not a fact that you in making up what you call the correct return for these companies, omitted all the items of depreciation, for the reason that under their system of bookkeeping they did not maintain a so-called depreciation account?

A. It is a fundamental principle that they will not accept any claim for depreciation unless it is evidenced by some reduced value of assets.

Q. That was the sole ground of objection to the depreciation items found in the returns made by the companies; it was the fact that their books did not have any depreciation account?

A. That is the practical question. It must be on the books first; afterwards it is decided on its merits.

168 Q. Is it or is it not the fact that your reason for the rejection of any allowance in the returns made by you for depreciation, was because there was no depreciation account carried on the books of the companies?

A. No, sir. I always look up this matter and try to keep it right. In this particular case it was taken up by the Department. The government had rejected the [—]. They [simoly] say you just make a return, hence it was out of my hands.

Q. If there had been a depreciation account kept in the books of these companies would you have looked into it?

A. I would have gone into the matter as fairly as possible, threshed it out, and put it up to the department,

Q. Would you have made in what you call your correct return, an allowance for depreciation?

A. Yes, sir, I would have made a return based upon my examination.

Q. Then on your account as corrected, returned by you to the Commissioner, you did not make an allowance for depreciation because there was no depreciation account on the books of the companies?

A. Primarily there was nothing on the books. The merits of the case had been taken away from me. It was a direct communication between me and the Commissioner. I am the agent of the Commissioner.

Q. The fact is, is it not, that you struck out any allowance in what you call the correct return, on account of depre-
169 ciation, because there was nothing shown on the books, and it was left to the Commissioner.

A. I can give you my report. It will cover the whole of that.

Q. Please answer yes or no.

A. I can't answer your question yes or no, because of the peculiar conditions. That particular claim had been taken up with the department. My figures are simply based upon the fact that there is no depreciation on them. The report goes to the Commissioner, and he considers the merits of the claim.

Q. You [kn-w] the Commissioner claimed that you had gone into this on its merits; but as far as that report was concerned, you intended that as a report of what the books showed?

A. My return threw the claim out because it was not evidenced. The case had been taken up by the higher authorities.

Q. Consequently, your report consisted of a summary of your examination of the books.

A. Yes, sir, it did. It was a book examination.

Q. Will you explain to me what the method of these plaintiff corporations was, under their bookkeeping system, of pro-

viding for the receipts from the sales of property, whether ore, lots or timber sales, as long as we had no depreciation account, what method did they pursue?

A. They had a profit and loss account; all the receipts were credited I think to profit and loss account, and debited; the charges against it were debited.

Q. It would be necessary in a bookkeeping system,
170 either to have a profit and loss account or a depreciation account, would it not?

A. Or have both.

Q. They could have both? A. Yes, sir.

Q. But it was necessary to have some account, in order to balance the receipts or dividends, would it not, to show the disposition on the books?

A. They have to have an account to show what becomes of the money of course.

Q. One way of doing that would be to charge to so called depreciation account?

A. Depreciation is either a reduction of the capital assets or a loss in their value, or it is a taking of the profits and setting them aside as a provision for depreciation. If you did that you wouldn't have any profits distributed, they couldn't be distributed as profits.

Q. My question was, it would be necessary in a proper bookkeeping system to have one account of profit and loss account, or a depreciation account into which they are charged.

A. You may have a profit and loss, or loss and gain account; but a depreciation account is separate and distinct, that has nothing to do with it.

Q. Depreciation varies of course according to the nature of the property. A. Yes, sir. If it be real property there might not have been any necessity for opening [for opening] a depreciation account. A certain amount of money would be set aside for the purpose of maintaining the property.

171 Testimony closed.

The Court: That is a question of law to be decided by the Court. But I do not consider that the not keeping of a depreciation account is at all material.

Testimony closed.

(Memorandum of the Court.)

The Court: These corporations are subject to the tax if their gross income, after making the necessary deductions, brings them within the law; but if the evidence in these cases shows that they have not received anything which can properly be called gross income, then they are not subject to the law, and the judgment will have to be for the plaintiffs.

172 (Defendant's Request for Findings and Declarations of Law, and Exceptions to Rulings thereon.)

At the conclusion of the testimony in these cases the defendant requested the Court to declare and hold the law of these cases to be as follows:

I.

That the royalties paid to and received by the plaintiffs under and pursuant to the several mining leases referred to in the evidence constitute and are gross income within the spirit and meaning of the Corporation Tax law approved August 5, 1909.

II.

That the Commissioner of Internal Revenue was authorized by said Act of Congress to assess against the plaintiffs the taxes mentioned in the complaints herein upon the royalties paid to the plaintiffs for the years 1909, 1910 and 1911.

III.

That the defendant is entitled to judgment for the taxes collected under and pursuant to the assessment made by the Commissioner of Internal Revenue, being the same taxes to recover which these actions were instituted.

Each of said requests was overruled and denied by the Court, to which ruling of the Court overruling and denying the several requests of the defendant, defendant severally excepted thereto, which exceptions were allowed by the Court.

CHARLES A. WILLARD,
Judge.

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173 (Opinion of the District Court.)

At the close of the evidence, Willard, J. delivered the following oral opinion:

In the case of Flint vs. Stone Tracy Company, 220 U. S. 107, the Court held that this is a tax upon the privilege of doing business in a corporate capacity. There are in that statement two elements: one, "doing business", and the other "in a corporate capacity". That these three companies the plaintiffs here are acting in a corporate capacity is unquestioned. It was said in this same case on page 162, that Congress was justified in imposing an excise tax upon corporations, on account of certain advantages which accrued from carrying on busi-
174 ness in that capacity. The court said on page 161;

"The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals. These advantages are obvious, and have led to the formation of such companies in nearly all branches of trade. The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships."

All of these advantages these corporations enjoy, and the evidence in the case shows that they enjoy them to a higher degree than happens in most corporations: The large number of owners of the property, the fact that some of them were minors and the fact that the property owned was property which could be leased most [advantageousl-] for more than 25 years, in which leases a guardian could not join, show almost a necessity that the owners of these properties should transact business in a corporate capacity. They indicate that these companies would, all other circumstances being equal, be under more obligation to pay this tax than others who did not secure so many advantages from the transaction of business in a corporate capacity. But this is immaterial, and I lay aside for the purpose of this case, all evidence relating to the complex character of the title and the number of owners, and look at the case in exactly the same way that I would look at it if Mr. Bennett, Mr. Longyear and Mr. Snyder being the sole
175 owners, had organized the companies.

The principal question on this branch of the case is, whether these corporations are engaged in business. The definition of that phrase in Flint vs. Stone Tracy Company has already been read by Mr. Van Derlip. The court said at page 171:

"It remains to consider whether these corporations are engaged in business. 'Business' is a very comprehensive term and embraces everything about which a person can be employed. Black's Law Dict. 158, citing People vs. Commissioners of Taxes, 23 N. Y. 242, 244. 'That which occupies the time, attention and labor of men for the purpose of a livelihood or profit.' Bouvier's Law Dictionary, Vol. 1, page 273."

It is said that this case is identical with the case of Zonne vs. Minneapolis Syndicate, 220 U. S. 187, but I see quite a marked distinction between the two cases. It is true that in this case valuable property has been leased for a number of years, and that the companies, so far as that property is concerned, received royalties. In this respect they are similar to the Zonne case. But in the Zonne case, so far as the report of that case shows, the owner of the land had nothing to do with the management of the business. It had no supervision over the renting of the building and had no interest in supervising it. Here the evidence shows directly the contrary. It shows that under the terms of the lease the owners of this property have the right to inspect the work in the mines as it proceeds. It not only shows that the companies have that right, but it shows that they in fact exercised it and are exercising it It shows hat they are doing that for their own advantage, for the purpose of seeing that all the ore which is valuable and which the lessees are bound to take out, is taken out. This appears through all the testimony. It appears in the testimony of Mr. Bennett, and it appears in the resolutions adopted to settle te differences between the Oliver Mining Company and

The Kearsage Land Company, with reference to the Glen
176 mine; showing in fact, that the lessors, so far from remaining idle and passive, and doing nothing but receiving the rent which was paid to them, exercised constant watch and care over the operations of the lessees. They did that, and they must have done it necessarily, I assume, because the testimony is that they considered it for their advantage and profit to do so. If that were all that the evidence showed, I should say that this case was radically distinguished from the Zonne case, also radically distinguished from the Nipissing case and from the Minehill case, because in no one of those cases did the lessor have anything whatever to do with the operation of the physical property. In all three of those cases the lessors simply received the money. They exercised no supervision over the management of the property, and had no right to do so, so far as the cases show.

But that is not all. The evidence shows that these three companies during each one of the three years were engaged in selling real estate, and so far as those sales are concerned, they were not small. The Sargent Land Company's sales amounted to $4,624 in 1909, to $6,629 in 1910, and in 1911 they amounted to $3,385. That was engaging in business, to my mind, it was selling real estate. They also did other things which have been referred to as being of such a light and trivial character as not to justify the court in holding that they con-

stituted a doing of business, such as the sale of stumpage from some of the property which had been burned over, leasing some properties at Hibbing, and taking leases from squatters in order to more easily evict them. It is true that those matters were trivial, but they indicate that the companies were constantly supervising and caring for this property. It was their business, and in fact it was necessarily their business, because there was no one else to do it. They had to take care of that part of their property which was not leased, some one had to take care of it, and they did take care of it. There was evidence that the Kearsarge Company in conducting the explorations in 1909 incurred an expense of $990 in test-pits.
177 I assume that that was for the purpose of exploring the property to ascertain what its value was. It was an exploration of the socalled Pearce 40 to ascertain whether or not there was any more ore there. Under the head of inspection, the Sargent Company in 1909 employed Longyear during explorations made by the Great Western Mining Company to take samples and classify them. I understand that the Great Western Mining Company was not engaged in mining operations, but it was simply exploring for itself, and the Sargent Company supposed that it would be for its own benefit to know something about what was going on. All these things indicate to my mind the doing of and engaging in business. It was doing the business of handling a large property, selling lots, and seeing that the lessees lived up to their contracts. If that is not engaging in business, I do not know what is. But it is said that it was not for any gain or profit. It is said that no company comes within the operation of this act unless it is organized for profit. I do not know that it is necessary to decide exactly what that means in this case, although my present opinion is that the words "organized for profit" are used to distinguish these corporations from charitable corporations; that any corporation organized by private persons for their own advantage and interest, and not for social, charitable or beneficent purposes, is organized for profit; and that a company organized as these companies were, to acquire title to an estate for the purpose of liquidating it and dividing the proceeds among the owners, is organized for profit, as that term is used in the act in question. And the persons who organized these companies evidently considered it so, because when the first articles were adopted they were drawn under the provisions of the Minnesota Statutes which related to companies organized for profit.

There was considerable evidence to show that the companies themselves did not engage in the business of selling lots, and did not themselves do the inspection, but that such work was done and the sales were made by other companies em-
178 ployed by them; that the Meriden Iron Company was employed to do the inspection, and that the E. J. Longyear Company was employed to sell the lots. The fact that they employed a company to do the selling on a commission, instead of having their treasurer or manager do it, does not relieve them from the charge of doing business. The same is true with regard to this inspection work. They might have employed Warren themselves to do this work, and if in so employing him they would be engaged in doing business, they certainly would be if they employed a company to do it. In fact, in the case of McCoach vs. Minehill & Schuylkill Haven R. R. Company, which was decided on April 7th, 1913, by the United States Supreme Court, the court said:

"From the facts as stated above it is entirely clear that the Minehill Company was not, during the years of 1909 and 1910, engaged at all in the business of maintaining or operating a railroad, which was the prime object of its incorporation. This business, by the lease of 1896, it had turned over to the Reading Company. If that lease had been made without authorization of law, it may be that for some purposes, and possibly for the present purpose, the lessee might be deemed in law the agent of the lessor; or at least the lessor held estopped to deny such agency."

I do not myself think that the amendment of the articles of incorporation makes any difference, so far as this case is concerned. The original articles authorized the company to engage in the business of buying and selling real estate. The amended article provides as follows:

"The general purpose of the corporation is to unite in one ownership the undivided fractional interests of its various stockholders in lands, tenements and hereditaments, and to own such property, and, for the convenience of its stockholders, to receive, and distribute among them, the proceeds of any disposition of such property at such times, in such amounts, and in such manner, as the board may determine."

It is true that that amendment specifically mentions
179 only receipts of the proceeds, but it authorizes the corporation to own property. The power to sell the property so that the proceeds can be received, is necessarily implied

by the article itself. The corporation owns the property; if it is to distribute the proceeds of a sale it must itself make the sale, for no one else can do it. This is the theory upon which the corporations have proceeded. Since the amendment the directors have taken care of the property, have sold some of it, and have done this in strict conformity with the amended article.

But this question, I think, has been decided by the case of Mitchell vs. Clark Iron Company, 220 U. S. 107. The bill alleged in that case in effect that the defendant Iron Company was the owner of the land described in the bill; that prior to the passage of the act in question it had leased the land; that it had done no business, except to watch over and care for said lands, and receive rents and royalties therefrom, and distribute the same among the stockholders, and such business as was necessary to defend the title. That was the allegation upon which the case was decided. The evidence in this case does not show it in any more favorable light for the plaintiffs. Upon that allegation the Supreme Court decided that the company was doing business within the terms of the act. I must therefore decide that these companies were so doing business.

Reported with the case of Flint v. Stone Tracy Company is the case of the Fifty Associates. On page 170 is said:

"They are operating under a charter to own real estate with power to build, improve, alter, pull down and rebuild, and to manage, exchange and dispose of the same."

That company was held to be doing business or engaged in business within the purpose of the act.

I have already referred to the case of McCoach vs. Minehill Railroad Company and the case of United States vs. Nipissing Mines Company. As I have said before, I think that they are not controlling authorities in this case, and I have come
180 to the conclusion that these companies were during all the times named engaged in business, so as to bring them within the operation of the act, and that it was their duty to make returns.

But the next question, and to my mind the important question, is whether or not the sums of money which were received by the companies during these years as royalties and on the sales of lots were gross income within the meaning of the act. It appears from the evidence that the Collector treated the

gross receipts of the companies as "gross income". The question of what income was, or what depreciation was, was not raised in the case of Mitchell vs. Clark Iron Company, and it was not raised in any of the cases decided at the time the case of Flint vs. Stone Tracy Company was decided. The only question there, as I understand it, was whether the companies were bound to make returns. The word depreciation and what it means in this act are to my mind not vitally important here. I do not base my decision upon the meaning of that word, nor upon its use in the act, but rather upon the meaning which should be given to the words gross income. Those are the words used in the act, together with the words "net income", and "earnings". The words gross receipts were not used in this act, as they were in the case of the Spreckles Sugar Refining Co. vs. McLain, 192 U. S. 397, nor are the words used here "deposits", as was the word used in Society for Savings vs. Coite, 6 Wall. 594. What was intended by the use of the words gross income? What does the word income mean? In ordinary speech people recognize a difference between capital and income. I believe that the ordinary meaning attached to income, when it is not derived from personal exertion, is that it is something produced by capital without impairing that capital, and which leaves the property intact, and that nothing can be called income for the purpose of this act, which takes away from the property itself. If it does, then it ceases to be income, and amounts to a sale of capital assets. This definition of the word income I
181 think is deducible from what was said in Flint vs. Stone Tracy Company, although it is not so distinctly stated. On page 146 the court said:

"The income is not limited to such as is received from property used in the business, strictly speaking".

That necessarily means that the property itself remains in the business, and continues to be used in the business, and that income was something that was derived from the use of it, leaving the property intact. On page 165 the Court said:

"It is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is non-taxable".

It is important to notice that in that connection the court was speaking of government bonds which are not taxable. Income derived from government bonds is money derived from them without impairing the capital which produced it.

It follows necessarily from the views which I have expressed, that the words "gross income" do not mean "gross receipts". It is apparent to me that gross income can not mean gross receipts. Take, for example, the case of a mercantile corporation. It has property at the beginning of the year worth $100,000. During the year it sells at retail $10,000 of that property at what it cost. Then in the last month of the year, in December, it sells the entire property which it has left for $90,000, so that its gross receipts for the year are $100,000. It cannot be possible that such a corporation is bound to pay this tax on $100,000. Having sold $10,000 at no profit, it ought not to be subject to any taxation on that. As to the $90,000, that is money derived from a sale of capital assets. It is simply a change in the form of the capital; the merchandise has become money. If that $90,000 is taxable under this act, it can only be on the theory that congress intended to put a tax upon the transfer of property. I do not doubt the power of con-
182 gress to do that, but when the court decided in the Flint case that this was a tax upon the privilege of doing business in a corporate capacity, it expressly decided that it was not a tax upon the transfer of property. I will refer again to the illustration which I have given. I will modify it by assuming that the corporation sold the $90,000 in question for $80,000; that is, that the merchandise cost it $90,000 and it sold it for $80,000. That $80,000 must figure in its gross receipts for that year. But it lost $10,000 during the year, instead of making $90,000. It is perfectly apparent from the language of the act, that it was never the intention of congress to impose a tax upon a corporation that was not making money; it was never its intention to tax a losing business.

Coming to the regulations made by the Commissioner of Internal Revenue, it will be noticed that the words "gross receipts" are nowhere used in the act or in the regulations. On the contrary, the following statement is found in Article 2, Section 5:

"It will be noted from these definitions that gross income is practically the same as gross profits."

An examination of the rules given for the determination of the gross income of different kinds of corporations shows that it was never in the mind of the Commissioner to make the gross receipts the foundation for a determination of the gross income.

In the same Article 2, Sec. 5 there is found the following:

"Sale of capital assets. In ascertaining income derived from the sale of capital assets, if the assets were acquired subsequent to January 1, 1909, the difference between the selling price and the buying price shall constitute an item of gross income to be added to or subtracted from gross income according to whether the selling price was greater or less than the buying price. If the capital assets were acquired prior to January 1, 1909, the amount if increment or depreciation representing the difference between the selling and buying price is to be adjusted so as to fairly determine the proportion of the loss or gain arising subsequent to January 1, 1909, and which
183 proportion shall be deducted from or added to the gross income for the year in which the sale was made."

This indicates that it is not money derived from capital that is to be taxed, but only that part of it which can be in some manner determined to be profits.

That this ore in place is capital, and is part of the real estate, I think admits of no question. It is just as much a part of the real estate as trees standing on the land.

Let us suppose that John S. Pillsbury & Company when it owned this land with the timber still standing thereon was a corporation, that in 1908 it sold the timber with the privilege of removing it within ten years, and that in 1909, 1910 and 1911 the purchaser cut the timber and during these years paid the purchase price of it. Could it be said that the purchase price so received was income within the meaning of this act? I do not think that it could. It was not income, it was the property itself; and, as I said before, the trees standing on the land are no more a part of the realty than is the ore under the surface of the land. They are both capital, and money derived from a sale thereof can not be considered income, whether it be money received from the ore, or money received from the timber.

There are two cases, and only two, to which my attention has been called that have passed upon this question; one is United States vs. Nipissing Mines Company, 202 Fed., 803, where the conclusion was reached that money thus received was not income, and the other is Stratton's Independence vs. Howbert, decided in the District Court of Colorado. Of the cases cited in the opinion only two had to do with questions of taxation.

In King vs. Attwood, 6 Barn & Cres., 277, Attwood as the owner of a coal mine was assessed on a rate for the relief of the poor. But the act there construed (43 Eliz. c. 2) specifically made owners of coal mines rateable.'

184 The same is true of Coltness Iron Company vs. Black, 6 Law Rep. Appeal Cases, 315. Moreover, in that case it was said: "The intention of the act, it is abundantly clear, was in Schedule A to tax 'property'. If a man had bought an estate, the tax was intended to be paid by him on the annual value of that estate, without reference to where he got it, or how he got it, or how much he paid for it. So if a man built a house or bought a house, he was intended to pay tax on the annual Value of the house, no matter what it costs. Nor does anything turn upon the fact that the estate is a permanent and undecaying species of property while the house is a species of property of a less durable kind; he was intended to pay the tax upon it as long as it lasted. "What then is the case of a mine? In the Schedule A which is the schedule applicable to 'property', a 'mine' is in express terms included as a species of 'property', which is made the subject of a tax."

I attach no importance to the fact that the company used the word dividends in making this distribution. If the money was not gross income the fact that when they distributed it they called it dividends, could not in any sense change the law as to what the real character of the money was. Nor do I attach any importance to the fact that upon the books the companies carried no "depreciation" account.

I come now to the decision of the Commissioner which has been read by the District Attorney as a part of his argument. It seems to be based upon the theory that when the Sargent Company, for example, was organized in 1906 it bought the property for $108,000, that it was then worth much more than that sum, that this excess is being received annually by way of royalties, and that the portions received in 1909, 1910 and 1911 must be considered as profits, and therefore income to be taxed. The Commissioner seems to have made an attempt to apply to the case that part of the regulations heretofore quoted
185 under the heading "Sale of Capital Assets". This property was all acquired prior to January 1, 1909. In applying the rule, it is necessary for him to determine the proportion of the gain which arose subsequent to that date. There is no evidence to show what the value of this property was at any time before the incorporation, or at any time since. Yet it clearly appears that there has been no gain at all, so far as these plaintiffs are concerned, since 1909. All of the leases were

made prior to that date for terms of 50 years or more. The value the property to the plaintiffs was then fixed, and it could not be changed to their advantage during the terms of the leases. In other words, the property was worth no more to them in 1909, 1910 and 1911 than it was in 1906, 1907 and 1908.

The regulation relating to income from sale of capital assets is therefore by its express terms inapplicable to this case.

But the assumption that there was any profit even in 1906 is entirely unwarranted. The only basis for that assumption is the fact that the Sargent Company was organized with a capital stock of $108,000, which it issued for the land conveyed to it, and that the land is now worth much more than that amount.

It will be noticed that the amount of the capital stock was fixed a $108,000, because the smallest interest which any owner of the property had was one one hundred and eighth part of the whole. It is perfectly apparent from the evidence that $108,000 was selected as the value of the capital without any reference whatever to the value of the property. The value of the property was not then considered, and it is apparent that it could not have been, because at that time all the leases had been made, and it was then known that the value of the property was largely in excess of $108,000. It is evidence that taking $108,000 as the capital stock was a mere nominal capitalization, without any reference to value. It comes very near
in substance, as I thought when I heard the evidence,
186 to a corporation with shares without par value, such as
are allowed now by the laws of New York, as I understand. Take the illustration which I gave when Mr. Houpt was presenting his side of the case, a Bridge Company capitalized for $10,000, when the property itself cost a million dollars. Manifestly, it would be most unjust to say, for the purpose of taxing the company under the act, that it had made the difference between $10,000 and the cost of the bridge, simply because it had selected $10,000 as the amount of its capital stock. That sum was selected for its own convenience, without any reference whatever to the value of the property. If the Sargent Company had selected $108,000,000 as the amount of its capital stock instead of $108,000, would these receipts be taxable under this act? Evidently not, according to the theory of the Commissioner.

This case is to be decided upon what the actual facts are, and not upon what they appear to be. The actual facts are that nobody has made a dollar out of these properties by these in-

corporations. The evidence shows that the same persons own the stock now who owned the property before the corporations were organized. The mere change of form of ownership from that of these individuals to that of a corporation owned by the same individuals can not produce such large profits as are claimed here.

The only conclusion that I can come to on this branch of the case is, that this money was never received as gross income, and cannot be in any sense called income; that it was never taxable, and that the tax on it was wrongfully collected. I assume that there is no question about the amount, so that judgments can be rendered for the amounts claimed in the complaints. I do not propose to make special findings of fact. I shall make a general finding in each one of the cases for the plaintiff, and will order judgment for the amount claim-
187 ed. I think, Mr. Houpt, that you should make some requests for declarations of law.

Mr. Houpt: I would rather except to the ruling of the court holding that the receipt of royalties, as shown in this case, does not constitute gross income.

The Court: Note an exception.

Approved: Charles A. Willard.

(Certificate of Judge to Bill of Exceptions.)

I hereby certify that the foregoing is conformable to the truth and contains all the evidence introduced on the trial of said causes and all proceedings had upon the trial thereof; and inasmuch as the same constitutes no part of the record herein, the same is allowed and certified as and for the bill of exceptions herein.

Dated October 6th, 1913.

CHARLES A. WILLARD,
Judge.

Endorsed: Bill of Exceptions, Filed in the District Court on Oct. 6, 1913.

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188 Assignments of Error.

Sargent Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue,
Defendant.

And now comes the said defendant by Charles C. Houpt, his attorney, and says that upon the trial of said cause there was manifest error to the prejudice of the defendant in the following respects:

I.

The Court erred in refusing to hold and declare the law to be as stated in defendant's first request.

II.

The Court erred in refusing to hold and declare the law to be as stated in defendant's second request.

III.

The Court erred in refusing to hold and declare the law to be as stated in defendant's third request.

IV.

The Court erred in holding and deciding that the royalties received by the plaintiff as shown in the testimony did not constitute "gross income" within the meaning and intent of the Act of August 5, 1909.

V.

The Court erred in ordering and directing judgment for the plaintiff.

CHARLES C. HOUPT,
Attorney for Defendant.

Dated October 6th, 1913.

Endorsed: Filed in the District Court on Oct. 6, 1913.

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189 Assignments of Error.

Sutton Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

And now comes the said defendant by Charles C. Houpt, his attorney, and says that upon the trial of said cause there was manifest error to the prejudice of the defendant in the following respects:

I.

The Court erred in refusing to hold and declare the law to to be as stated in defendant's first request.

II.

The Court erred in refusing to hold and declare the law to be as stated in defendant's second request.

III.

The Court erred in refusing to hold and declare the law to be as stated in defendant's third request.

IV.

The Court erred in holding and deciding that the royalties received by the plaintiff as shown in the testimony did not constitute "gross income" within the meaning and intent of the Act of August 5, 1909.

V.

The Court erred in ordering and directing judgment for the plaintiff.

CHARLES C. HOUPT,
Attorney for Defendant.

Dated October 6th, 1913.

Endorsed: Filed in the District Court on Oct. 6, 1913.

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190 (Assignments of Error.)

Kearsarge Land Company, a corporation, Plaintiff,

vs.

Fred von Baumbach, Collector of Internal Revenue, Defendant.

And now comes the said defendant by Charles C. Houpt, his attorney, and says that upon the trial of said cause there was manifest error to the prejudice of the defendant in the following respects:

I.

The Court erred in refusing to hold and declare the law to be as stated in defendant's first request.

II.

The Court erred in refusing to hold and declare the law to be as stated in defendant's second request.

III.

The Court erred in refusing to hold and declare the law to be as stated in defendant's third request.

IV.

The Court erred in holding and deciding that the royalties received by the plaintiff as shown in the testimony did not constitute "gross income" within the meaning and intent of the Act of August 5, 1909.

V.

The Court erred in ordering and directing judgment for the plaintiff.

CHARLES C. HOUPT,
Attorney for Defendant.

Dated October 6th, 1913.

Endorsed: Filed in the District Court on Oct. 6, 1913.

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192 Petition for and Order Allowing Writ of Error.

Sargent Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

And now comes the said defendant by Charles C. Houpt, his attorney, and prays the allowance of a writ of error to remove the judgment and proceedings in this cause into the United States Circuit Court of Appeals for the Eighth Circuit, in order that defendant may have a review of said judgment in the said Circuit Court of Appeals, and that a citation to that end may issue to the plaintiff pursuant to the laws of the United States and the rules and practice of this Honorable Court.

CHARLES C. HOUPT,
Attorney for Defendant.

A writ of error in the above entitled cause is allowed as prayed for in the foregoing petition.

CHARLES A. WILLARD,
United States District Judge.

Dated October 6th, 1913.

Endorsed: Filed in the District Court on Oct. 6, 1913.

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193 Petition for and Order Allowing Writ of Error.

Sutton Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

And now comes the said defendant by Charles C. Houpt, his attorney, and prays the allowance of a writ of error to remove the judgment and proceedings in this cause into the United States Circuit Court of Appeals for the Eighth Circuit, in order that defendant may have a review of said judgment in the said Circuit Court of Appeals, and that a citation to that end may issue to the plaintiff pursuant to the laws of the United States and the rules and practice of this Honorable Court.

CHARLES C. HOUPT,
Attorney for Defendant.

A writ of error in the above entitled cause is allowed as prayed for in the foregoing petition.

CHARLES A. WILLARD,
United States District Judge.

Dated October 6th, 1913.

Endorsed: Filed in the District Court on Oct. 6, 1913.

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194 Petition for and Order Allowing Writ of Error.

Kearsarge Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

And now comes the said defendant by Charles C. Houpt, his attorney, and prays the allowance of a writ of error to remove the judgment and proceedings in this cause into the United States Circuit Court of Appeals for the Eighth Circuit, in order that defendant may have a review of said judgment in the said Circuit Court of Appeals, and that a citation to that end may issue to the plaintiff pursuant to the laws of the United States and the rules and practice of this Honorable Court.

CHARLES C. HOUPT,
Attorney for Defendant.

A writ of error in the above entitled cause is allowed as prayed for in the foregoing petition.

CHARLES A. WILLARD,
United States District Judge.

Dated October 6th, 1913.

Endorsed: Filed in the District Court on Oct. 6, 1913.

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195 (Order that no Execution Issue Against the Defendant.)

Sargent Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

It is hereby certified by the Court that the recovery in this cause against said defendant is for acts done by him as United States Collector of Internal Revenue, and that such action was taken under the direction of the United States Commissioner of Internal Revenue.

Wherefore, under the provisions of Section 989 of the Revised Statutes of the United States, it is Ordered that no execution issue in this cause against said defendant.

Dated this 6th day of October, 1913.

CHARLES A. WILLARD,
Judge.

Endorsed: Filed in the District Court on Oct. 6, 1913.

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196 (Order that no Execution issue against the Defendant.)

Sutton Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

It is hereby certified by the Court that the recovery in this cause against said defendant is for acts done by him as United States Collector of Internal Revenue, and that such action was taken under the direction of the United States Commissioner of Internal Revenue.

Wherefore, under the provisions of Section 989 of the Revised Statutes of the United States, it is Ordered that no execution issue in this cause against said defendant.

Dated this 6th day of October, 1913.

CHARLES A. WILLARD,
Judge.

Endorsed: Filed in the District Court on Oct. 6, 1913.

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197 (Order that no Execution issue against the Defendant.

Kearsarge Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

It is hereby certified by the Court that the recovery in this cause against said defendant is for acts done by him as United States Collector of Internal Revenue, and that such action was taken under the direction of the United States Commissioner of Internal Revenue.

Wherefore, under the provisions of Section 989 of the Revised Statutes of the United States, it is Ordered that no execution issue in this cause against said defendant.

Dated this 6th day of October, 1913.

CHARLES A. WILLARD,
Judge.

Endorsed: Filed in the District Court on Oct. 6, 1913.

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198 (Writ of Error in case of Sargent Land Co., filed in the District Court on Oct. 6, 1913.)

United States of America—ss.

The President of the United States of America, To the Honorable the Judges of the District Court of the United States, for the District of Minnesota, Third Division—Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the June Term, 1913, thereof, between Sargent Land Company, a corporation, Plaintiff and Fred von Baumbach, Collector of Internal Revenue, Defendant manifest error hath happened, to the great damage of the said defendant as by his complaint appears,

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 5th day of December, 1913, to the end that the record and proceedings aforesaid, being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice, of the United States, this 6th day of October, A. D. 1913.

Seal
U. S. Dist. Court
Dist. of Minnesota.
Third Division

Issued at office in St. Paul, Minnesota, with the seal of the District Court of the United States, for the District [or] Minnesota, Third Division.

CHARLES L. SPENCER,
Clerk of the District Court of the United States, for the District of Minnesota.

Allowed by CHARLES A. WILLARD,
Judge.

Filed October 6th, 1913. Charles L. Spencer, Clerk.

United States of America,
District of Minnesota,
Third Division—ss.

In obedience to the command of the above writ, I herewith transmit to the United States Circuit Court of Appeals for the Eighth Circuit, a duly certified transcript of the record and proceedings in the within entitled cause, with all things concerning the same.

Seal
U. S. Dist. Court
Dist. of Minnesota.
Third Division

In Witness Whereof, I hereunto subscribe my name and affix the Seal of the District Court of the United States for the District of Minnesota, Third Division.

CHARLES L. SPENCER,
Clerk of the District Court of the United States, for the District of Minnesota.

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200 (Writ of Error in case of Sutton Land Co., filed in the District Court on Oct. 6, 1913.)

United States of America—ss.

The President of the United States of America, To the Honorable the Judges of the District Court of the United States, for the District of Minnesota, Third Division—Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the June Term, 1913, thereof, between Sutton Land Company, a corporation, Plaintiff, and Fred von Baumbach, Collector of Internal Revenue, Defendant, manifest error hath happpened, to the great damage of the said Fred von Baumbach, Collector of Internal Revenue, as by his complaint appears,

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit,

on or before the 5th day of December, 1913, to the end that the record and proceedings aforesaid, being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 6th day of October, A. D. 1913.

Seal
U. S. Dist. Court
Dist. of Minnesota.
Third Division

Issued at office in St. Paul, Minnesota, with the seal of the District Court of the United States, for the District [or] Minnesota, Third Division.

CHARLES L. SPENCER,
Clerk of the District Court of the United States, for the District of Minnesota.

Allowed by CHARLES A. WILLARD, Judge.

Filed October 6th, 1913. Charles L. Spencer, Clerk.

United States of America,
District of Minnesota, Third Division—ss.

In obedience to the command of the above writ, I herewith transmit to the United States Circuit Court of Appeals for the Eighth Circuit, a duly certified transcript of the record and proceedings in the within entitled cause, with all things concerning the same.

Seal
U. S. Dist. Court
Dist. of Minnesota.
Third Division

In Witness Whereof, I hereunto subscribe my name and affix the Seal of the District Court of the United States for the District of Minnesota, Third Division.

CHARLES L. SPENCER,
Clerk of the District Court of the United States, for the District of Minnesota.

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202 (Writ of Error in case of Kearsarge Land Co., filed in the District Court on Oct. 6, 1913.)

United States of America—ss.

The President of the United States of America, To the Honorable the Judges of the District Court of the United States, for the District of Minnesota, Third Division—Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District

Court, before you, at the June Term, 1913, thereof, between Kearsarge Land Company, a corporation, Plaintiff, and Fred von Baumbach, Collector of Internal Revenue, Defendant, manifest error hath happened, to the great damage of the said Fred von Baumbach, Collector of Internal Revenue, as by his complaint appears,

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 5th day of December, 1913, to the end that the record and proceedings aforesaid, being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 6th day of October, A. D. 1913.

Seal
U. S. Dist. Court
Dist. of Minnesota.
Third Division

Issued at office in St. Paul, Minnesota, with the seal of the District Court of the United States, for the District [or] Minnesota, Third Division.

CHARLES L. SPENCER,
Clerk of the District Court of the United States, for the District of Minnesota.

Allowed by CHARLES A. WILLARD, Judge.

Filed October 6th, 1913. Charles L. Spencer, Clerk.

United States of America,
District of Minnesota, Third Division—ss.

In obedience to the command of the above writ, I herewith transmit to the United States Circuit Court of Appeals for the

Eighth Circuit, a duly certified transcript of the record and proceedings in the within entitled cause, with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name and affix the Seal of the District Court of the United States for the District of Minnesota, Third Division.

Seal
U. S. Dist. Court
Dist. of Minnesota.
Third Division

CHARLES L. SPENCER,
Clerk of the District Court of the United States, for the District of Minnesota.

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203 (Stipulation for Transmission to Court of Appeals of copies of Two Mining Leases, Plaintiffs' Exhibits 15 and 16.)

Sargent Land Company, a corporaton, Plaintiff,
vs.
Fred Von Baumbach, Collector of Internal Revenue, Defendant.

Kearsarge Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

Sutton Land Company, a corporation, Plaintiff,
vs.
Fred Von Baumbach, Collector of Internal Revenue, Defendant.

It is hereby stipulated and agreed by and between the parties to the above entitled actions that as part of the record herein the Clerk of said Court may certify and transmit to the Circuit Court of Appeals, Eighth Circuit, copies of the two mining leases introduced by plaintiffs on the trial of these causes, and that said leases, when so certified and transmitted, may be taken and be a part of the record herein for all the purposes and uses of the writs of error in said cases; that the object of this stipulation is to avoid what is deemed to be the unnecessary expense of incorporating said leases in the printed record.

SNYDER & GALE,
JOHN R. VAN DERLIP,
Attorneys for Plaintiffs.

CHARLES C. HOUPT,
United States Attorney and
Attorney for Defendant.

Endorsed: Filed in the District Court on Oct. 6, 1913.

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205 Citation.

Sargent Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

The United States of America to the Sargent Land Company, a corporation—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty (60) days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's office of said District Court for the District of Minnesota, Third Division, wherein the Sargent Land Company, a corporation, is plaintiff and Fred von Baumbach, Collector of Internal Revenue, is defendant, to show cause if any there be why the judgment and sentence therein against said defendant, as in said writ mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness: The Honorable Charles A. Willard, Judge of said District Court, this 6th day of October, A. D., 1913.

CHARLES A. WILLARD,
Judge.

206 Endorsed: Due and personal service of the within citation is hereby admitted this 7 day of October, 1913.

SNYDER & GALE,
J. R. VAN DERLIP,
Attorneys for Plaintiff.

Filed in the District Court on October 13, 1913.

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208 Citation.

Sutton Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

The United States of America to the Sutton Land Company, a corporation—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty (60) days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's office of said District Court for the District of Minnesota, Third Division, wherein the Sutton Land Company, a corporation, is plaintiff and Fred von Baumbach,

Collector of Internal Revenue, is defendant, to show cause, if any there be, why the judgment ~~and sentence~~ therein against said defendant, as in said writ mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness: The Honorable Charles A. Willard, Judge of said District Court, this 6th day of October, A. D., 1913.

CHARLES A. WILLARD,
Judge.

209 Endorsed: Due and personal service of the within citation is hereby admitted this 7 day of October, 1913.

SNYDER & GALE,
J. R. VAN DERLIP,
Attorneys for Plaintiff.

Filed in the District Court on October 13, 1913.

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211 Citation.

Kearsarge Land Company, a corporation, Plaintiff,
vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

The United States of America to the Kearsarge Land Company, a corporation—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty (60) days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's office of said District Court for the District of Minnesota, Third Division, wherein the Kearsarge Land Company, a corporation, is plaintiff and Fred von Baumbach, Collector of Internal Revenue, is defendant, to show cause, if any there be, why the judgment ~~and sentence~~ therein against said defendant as in said writ mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness: The Honorable Charles A. Willard, Judge of said District Court, this 6th day of October, A. D., 1913.

CHARLES A. WILLARD,
Judge.

212 Endorsed: Due and personal service of the within citation is hereby admitted this 7 day of October, 1913.

SNYDER & GALE,
J. R. VAN DERLIP,
Attorneys for Plaintiff.

Filed in the District Court on October 13, 1913.

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213 (Praecipe for Transcript and Election as to Printing.)

Sargent Land Company, a corporation, Plaintiff,
No. 715. vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

Sutton Land Company, a corporation, Plaintiff,
No. 716. vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

Kearsarge Land Company, a corporation, Plaintiff,
No. 717. vs.
Fred von Baumbach, Collector of Internal Revenue, Defendant.

To the Clerk of said Court:

The undersigned, Attorney for the defendant in the above entitled causes, hereby files in the office of said Clerk this notice of the election of said defendant to take and file in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, to be printed under the supervision of the Clerk of said Circuit Court of Appeals, under its rules, a transcript of the record in said causes; and the Clerk of said District Court is hereby required to make and transmit to said Circuit Court of Appeals one transcript of the record in said causes, as follows:

Certified transcript of:

Complaint in cause No. 715,

Complaint in cause No. 716,

Complaint in cause No. 717,

Amended Answer in cause No. 715,

Amended Answer in cause No. 716,

Amended Answer in cause No. 717,

Judgment for plaintiff in cause No. 715,

Judgment for plaintiff in cause No. 716,

Judgment for plaintiff in cause No. 717,

Stipulation in causes Nos. 715, 716 and 717,

Bill of Exceptions, with order allowing same, in causes Nos. 715, 716 and 717,

Assignments of Error in cause No. 715,

Assignments of Error in cause No. 716,

Assignments of Error in cause No. 717,

214 Petition for Writ of Error and order allowing writ in cause No. 715,

Petition for Writ of Error and order allowing writ in cause No. 716,

Petition for Writ of Error and order allowing writ in cause No. 717,

Order directing that no execution issue against defendant in cause No. 715,

Order directing that no execution issue against defendant in cause No. 716,

Order directing that no execution issue against defendant in cause No. 717,

Stipulation that two mining leases (Plaintiffs' Exhibits 15 and 16) may be certified and transmitted to Circuit Court of Appeals, &c.

Praecipe for transcript on writ of error and election as to printing, &c.

And the Clerk is hereby directed, in accordance with a stipulation mentioned herein and made a part of the record on the writs of error herein, to certify and transmit to said Circuit Court of Appeals copies of Plaintiffs' Exhibits 15 and 16 in said causes.

CHARLES C. HOUPT,

United States Attorney for the District of Minnesota and Attorney for defendant.

Endorsed: Filed in the District Court on Oct. 29, 1913.

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215 (Clerk's Certificate to Transcript.)

I, Charles L. Spencer, Clerk of said District Court, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Eighth Circuit, that the foregoing, consisting of 214 pages, numbered consecutively from 1 to 214, inclusive, is a true and complete transcript of all the records, process, pleadings, orders, final judgment and all other proceedings in said causes and of the whole thereof, as appears from the original records and files of said Court, to-wit: Complaint in cause No. 715, Complaint in cause No. 716, Complaint in cause No. 717, Amended Answer in cause No. 715, Amended Answer in cause No. 716, Amended Answer in cause No. 717, Judgment for plaintiff in cause No. 715, Judgment for plaintiff in cause No. 716, Judgment for plaintiff

in cause No. 717. Stipulation in causes Nos. 715, 716 and 717, Bill of Exceptions, with order allowing same, in causes Nos. 715, 716 and 717, Assignments of Error in cause No. 715, Assignments of Error in cause No. 716, Assignments of Error in cause No. 717, Petition for Writ of Error and order allowing writ in cause No. 715, Petition for Writ of Error and order allowing Writ in cause No. 716, Petition for Writ of Error and order allowing writ in cause No. 717. Order directing that no execution issue against defendant in cause No. 715, Order directing that no execution issue against defendant in cause No. 716, Order directing that no execution issue against defendant in cause No. 717, Stipulation that two mining leases, (Plaintiffs' Exhibits 15 and 16) may be certified and transmitted to Circuit Court of Appeals, &c., Praecipe for transcript on writ of error, election as to printing, &c.; and I do further certify and return that I have annexed to said transcript, and included within said paging, the original Citation, together with the proof of service thereof; and that separately, I do hereby transmit to said Circuit Court of Appeals duly certified copies of the two mining leases mentioned in the stipulation last aforesaid, in accordance with said stipulation.

In Witness Whereof, I have hereunto set my hand as the Clerk aforesaid, and affixed the seal of said Court, at St. Paul, in the District of Minnesota, this 29th day of October, A. D. 1913.

Seal
U. S. Dist. Court
Dist. of Minnesota
Third Division

CHARLES L. SPENCER,
Clerk.

Filed Nov. 8, 1913. John D. Jordan, Clerk.



Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1914, of said Court, before the Honorable Walter H. Sanborn and the Honorable John E. Carland, Circuit Judges, and the Honorable Henry T. Reed, District Judge.

Attest:

[SEAL.] (Signed) JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the eighth day of November, A. D. 1913, a transcript of record pursuant to writs of error directed to the District Court of the United States for the District of Minnesota, were filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in certain causes wherein Fred von Baumbach, Collector, etc., is Plaintiff in Error and the Sargent Land Company, a corporation, is Defendant in Error; wherein Fred von Baumbach, Collector, etc., is Plaintiff in Error and the Sutton Land Company, a corporation, is Defendant in Error, and wherein Fred von Baumbach, Collector, etc., is Plaintiff in Error and the Kearsarge Land Company, a corporation, is Defendant in Error, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:



And thereafter the following proceedings were had in the Circuit Court of Appeals, in said causes, viz:

(Appearance of Counsel for Plaintiff in Error, in Cause No. 4081.)

United States Circuit Court of Appeals,
Eighth Circuit. No. 4081.

Fred von Baumbach, Collector of Internal Revenue, Plaintiff in Error,

vs.

Sargent Land Company, a corporation.

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

Charles C. Houpt,
U. S. Attorney.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 8, 1913.

(Appearance of Counsel for Defendant in Error, in Cause No. 4081.)

The Clerk will enter my appearance as Counsel for the Defendant in Error.

Fred B. Snyder,
Edward C. Gale,
John R. Van Derlip.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 17, 1913.

(Appearance of Counsel for Plaintiff in Error, in Cause No. 4082.)

United States Circuit Court of Appeals,
Eighth Circuit. No. 4082.

Fred von Baumbach, Collector of Internal Revenue, Plaintiff in Error,

vs.

Sutton Land Company, a corporation.

The Clerk will enter by appearance as Counsel for the Plaintiff in Error.

Charles C. Houpt.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 8, 1913.

(Appearance of Counsel for Defendant in Error, in Cause No. 4082.)

The Clerk will enter my appearance as Counsel for the Defendant in Error.

Fred B. Snyder,
Edward C. Gale,
John R. Van Derlip.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 17, 1913.

(Appearance of Counsel for Plaintiff in Error, in Cause No. 4083.)

United States Circuit Court of Appeals,
Eighth Circuit. No. 4083.

Fred von Baumbach, Collector of Internal Revenue, Plaintiff in Error,

vs.

Kearsarge Land Company, a corporation.

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

Charles C. Houpt.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 8, 1913.

(Appearance of Counsel for Defendant in Error, in Cause No. 4083.)
The Clerk will enter my appearance as Counsel for the Defendant in Error.

Fred B. Snyder,
Edward C. Gale,
John R. Van Derlip.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 17, 1913.

(Order of Submission.)

United States Circuit Court of Appeals,
Eighth Circuit. May Term, 1914.
Monday, May 11, 1914.

Fred von Baumbach, Collector, etc., Plaintiff in Error,
No. 4081. *vs.*
Sargent Land Company.
In Error to the District Court of the United States for the District of Minnesota.

Fred von Baumbach, Collector, etc., Plaintiff in Error,
No. 4082. *vs.*
Sutton Land Company.
In Error to the District Court of the United States for the District of Minnesota.

Fred von Baumbach, Collector, etc., Plaintiff in Error,
No. 4083. *vs.*
Kearsarge Land Company.
In Error to the District Court of the United States for the District of Minnesota.

The above causes having been called for hearing in their regular order, the same were argued as one case, whereupon, argument was commenced by Mr. Charles C. Houpt for plaintiffs in error, continued by Mr. John R. Van Derlip for defendants in error and concluded by Mr. Charles C. Houpt for plaintiffs in error. Thereupon, these causes were submitted to the Court on the transcript of record from said District Court and the briefs of counsel filed herein.

[Opinion.]

United States Circuit Court of Appeals, Eighth Circuit, No. 4081.
December Term, A. D. 1914.

Fred von Baumbach, Collector of Internal Revenue, Plaintiff in Error,
vs.
Sargent Land Company, a corporation, Defendant in Error.

Fred von Baumbach, Collector of Internal Revenue, Plaintiff in Error,
No. 4082. *vs.*
Sutton Land Company, a corporation, Defendant in Error.

Fred von Baumbach, Collector of Internal Revenue, Plaintiff in Error,

No. 4083. *vs.*

Kearsarge Land Company, a corporation, Defendant in Error.

In Error to the District Court of the United States for the District of Minnesota.

Mr. Charles C. Houpt, United States Attorney, appeared for plaintiff in error.

Mr. John R. Van Derlip (Mr. Fred B. Snyder and Mr. Edward C. Gale, were with him on the brief), for defendants in error.

Before Sanborn and Carland, Circuit Judges, and Reed, District Judge.

Syllabus.

1. Internal revenue—Corporation tax—Income.

The owners of lands practically valuable only for the ore in them, years before January 1, 1909, when the corporation tax act took effect, made mining leases thereof by which they granted the absolute right to dig and have the ore therein and to remove it within long terms, such as 25 and 50 years, and the lessees covenanted to pay yearly fixed amounts, such as 25 or 30 cents a ton for the ore extracted, and minimum yearly amounts to be credited on ores subsequently extracted in case sufficient amounts were not extracted to come to the minimums in any year. Thereafter, in the year 1906, these owners for the purpose of collecting their claims against the lessees under their covenants to pay for the ores and for the purpose of converting their property into money and distributing it among themselves, organized three corporations, conveyed these claims and the land to them in three lots, one lot to each corporation, and took from them therefor all the stock of these corporations in proportion to their undivided interests in the property. The corporations engaged in no mining, or trading, or other like business, but confined their operations to collecting the claims against the lessees, protecting and preserving the property, converting it into money and distributing the proceeds among its stockholders. In 1909, 1910 and 1911 the corporations collected the amounts which fell due in those years on the claims against the lessees under their covenants in the leases which amounted to several hundred thousand dollars, and received some small amounts for the sale of some stumpage and a few town lots.

Held: The amounts thus received by the corporations were not included in income within the meaning of that word in the corporation tax act, but were parts of the property or capital of the corporations in a different form.

2. Same—Depreciation.

If the amounts collected by the corporations on the claims against the lessees under their covenants were income then the property or capital of the corporations was reduced in amount and value by those amounts and the corporations were entitled to an allowance thereof for the depreciation of their property.

3. Same—Doing business.

Corporations that are the owners of property not engaged in business with themselves, that are engaged in no mining, trading, or other like business, but confine their operations to acts necessary or incidental to the protection and preservation of their property, to its conversion into money and the distribution thereof among its stockholders, are not "doing business" within the meaning of the corporation tax act and are not subject to the tax it prescribes.

4. Mining leases—When sales of the ore.

Mining leases whereby the lessees are granted the absolute and exclusive right to extract and have the ore in the land and to remove it during terms, such as 25 and 50 years, so long as to be practically equivalent to unlimited times, are in reality sales of the ore and the royalties reserved in the leases are in fact the purchase prices thereof.

5. Right judgment for wrong reason not reversible.

A right judgment which is warranted by the record and the facts and was rendered without error in the trial or rendition, may not be reversed on the sole ground that the trial court gave a wrong reason for the just judgment.

Statement.

These writs of error are sued out to reverse judgments against the Collector of Internal Revenue for the recovery of moneys which he exacted from the three corporations, plaintiffs below, over their protest as excise taxes for the years 1909, 1910 and 1911, under the corporation tax act of August 5, 1909, 36 Stat. 111, 112, Chap. 6, Sec. 38. The court below found and held that the Commissioner had measured these taxes by the amounts of the receipts by the corporations of moneys derived by them from the conversion of parts of their respective properties or capitals into money instead of by their receipts from their gains or incomes as required by the act.

Many years before that act was passed these corporations had become, and were at the time it went into effect, and during the years 1909, 1910 and 1911, the owners of lands on the Mesaba Range which were valuable only for the iron ore in them beneath the surface and of the rights to collect and receive the portions of the royalties on the ore which came due during those years under mining leases whereby the ore had all been granted to lessees prior to the year 1908 for fixed prices per ton of the ores extracted and yearly minimum amounts. The receipts of moneys during those years by which the Commissioner measured the taxes consisted of the payments of amounts of these royalties which came due during those years and of a few sums so small and insignificant as to be negligible in the discussion of the issues here for decision which were received from the sale of a few town lots and lands and a little stumpage. From the sum of the receipts from these sources the Commissioner deducted nothing for depreciation of the plaintiffs' property or for conversion of parts of that property into money or for anything else except the expenses of the corporations, the taxes they paid and the five thousand dollars specified by the act itself. For example, he found the receipts of the Sargent Company from the collection in 1909 of the royalties on the

es, the sales of lots and lands and stumpage to be $395,732.90; from is amount he deducted only $5,458.83, the expenses of operating the rporation and $540.38 taxes paid by it during the year and the five ousand dollars specified in the act which left $384,733.69, and he used one per cent of this amount to be collected as the excise tax on the corporation. The amounts collected of each of the companies for each of the years were measured and found on the same sis and it is these amounts which the court below found that the mpanies were lawfully entitled to receive back.

The errors assigned are that the court should have found and held at the royalties received by the companies during the years 1909, 10 and 1911 constituted gross income of the companies during those ars and that the Commissioner was authorized to collect one per nt thereof without any deduction for the depreciation of the property or capital by the collection of these royalties or the conversion parts of their capital into money and the distribution of the proeds to the stockholders of the companies.

The facts material to the questions now at issue in this case are ese: The companies are not and never have been mining companies; they never have operated any mines in any way; they ver made but one lease and the terms of that lease were agreed on before the corporation lessor was organized and after its ganization it signed the legal contract on these terms. These rporations are and always have been mere owners of the rights collect from the lessees the fixed amount per ton of ores mined the lessees under leases made before the corporations were orized and of the lands leased whose only substantial value was value of the ore therein. The origin of these corporations, the rpose of their organization and existence and the character and ent of their operation are disclosed by the following facts: In years between 1870 and 1880, George A. Pillsbury, John S. lsbury and Charles A. Pillsbury became the owners of immense cts of timber land in Minnesota from which they removed and l the timber. John M. Longyear and Russell M. Bennett, about 0, procured an option from them for such lands, exclusive of timber thereon, as they might select on account of the ore rein. After exploration they selected the lands now held by the ee companies and pursuant to the contract for the option these ds were so deeded in 1892 that the parties above named thereby ame the owners of the following undivided interests in them: nett, one-fourth; Longyear, one-fourth; J. S. Pillsbury, one-h; George A. Pillsbury, one-sixth and Charles A. Pillsbury, -sixth. By the year 1906 all three of the Pillsburys had died their interests in this property had been devised or had descended nany parties so that the interests of some of the owners were small as 1/108th. The original parties and their successors in rest had made all the leases ever made on the property but one had agreed upon the terms of that one. It had become very cult to get legal deeds or contracts from all of the owners on unt of the minority of some, the age and location of others. se owners were not operating mines or doing anything with property but that which was necessary to sell it, convert it money and distribute the proceeds among themselves. The

money or the depreciation of the values of their property by these collections and the distribution of the amounts they received to their stockholders.

Sanborn, Circuit Judge, after stating the facts, delivered the opinion of the Court.

For doing business in a corporate capacity the Tax Corporation Act of August 6, 1909, 36 Stat. 112, Sec. 38, imposes upon every corporation organized for profit having capital stock represented by shares an annual excise tax equivalent to one per cent of its net income above $5,000.00. It provides that such net income shall be ascertained by the deduction from "the gross amount of the income of such corporation * * * received within the year from all sources" by it (1) its expenses of operation paid out of income, (2) its losses including a reasonable allowance for the depreciation of its property, (3) certain interest paid by it, (4) taxes paid by it and (5) dividends on stock of corporations subject to the excise tax. The basis of the standard or measure by which the amount of the tax is to be determined is "the gross amount of the income of such corporation * * * received within the year from all sources," not the gross amount received by the corporation from all sources, and from this amount of its income is to be deducted its expenses paid out of its income, not any expenses paid out of its capital or property, and an allowance for depreciation of its property. That the word income in this act is not synonymous with the word receipts and that it does not include receipts from the conversion without gain or profit of any part of the property of the corporation into money, or into any other form, is demonstrated by the fact that this word income appears in the clause "the gross amount of the income of such corporation" and segregates and designates a specific part and not all of the receipts of the corporation as the basis of the measure of the tax, by the fact that only those expenses paid out of income, none of those paid out of capital or property, are to be deducted, by the fact that a deduction for depreciation of property is to be made, by the evident purpose and the whole tenor of the act. This word income is used throughout the statute in contradistinction to property or invested capital, and it was neither the intention of the Congress nor is it the legal effect of the Act to impose any tax on account of the amounts received by a corporation that is not engaged in the business of buying, selling or trading in property, from the conversion of its property without gain into money or into any other form. These corporations were never engaged in any such business. And it is not doubtful that the small amounts of money received by them from the sales of the lots and lands that were conveyed to them at their organization in 1906 were not income but were mere proceeds of parts of their property on account of which they could not be lawfully taxed.

But were the royalties which had been owing to these corporations by the lessees since 1906 and which these corporations collected and received in 1909, 1910 and 1911, as they fell due, income by the amount of which the taxes upon them must be measured under the tax act, or were they the mere proceeds of the conversion without

gain or profit of parts of their property into money and no part of the measure of their lawful tax? The lands and hence the property of the corporations had no substantial value without the rights to collect the royalties the lessees had covenanted to pay. The leases had been made by the former owners prior to 1907 and if there was any gain, profit or income from the making of the leases that income accrued years before the tax act took effect and the corporations are exempt from any taxation on account of it. The lessors by the leases granted to the lessees the exclusive right to dig, remove and have all the iron ore in the lands and the right to remove it during terms such as 25 or 50 years, so long in fact that they were in effect a grant of the right to take it without limit of time or quantity. The lessees had covenanted to pay annually certain fixed amounts such as 25 cents or 30 cents a ton for the ore they extracted and to pay fixed minimum amounts every year whether they extracted ore or not which were contracted to be and were credited on their liability for ore subsequently taken whenever in any year they failed to extract sufficient ore to come to the minimum amounts. In 1906 and 1907 these corporations took from the lessors the latters claims and rights to collect and receive from the lessees the royalties they had covenanted to pay for the ore, and the title to the lands and issued their stock therefor. If there was any gain, profit or income in this transaction it was made in 1906 and 1907, at least two years before January 1, 1909, when the tax act took effect, and the corporations were exempt from taxation on account of that income. *Merchants Ins. Co.* v. *McCartney*, 17 Fed. Cases No. 9443, page 46. On January 1, 1909, when the Act took effect and for years before that date, these corporations were the owners of the claims and rights to collect and receive the amounts which the lessees had covenanted by the leases to pay for the ore in the lands and of the lands themselves. These things were their absolute property on January 1, 1909, and none of them was any part of their subsequent income, gain or profit. The land was practically worthless; the rights and claims to collect the amounts the lessees had covenanted to pay for the ores were practically all there was of value in their property and these were worth hundreds of thousands of dollars. If they had sold these claims in 1909 for cash for their actual value for no more and no less than their actual value, no part of that cash could have been gain, profit or income. It could not have escaped being a mere different form of their property, of their capital and the corporations could not have been taxable on account of it. If prior to 1909 A had bought promissory notes secured by mortgages worth their face payable without interest during the years 1909, 1910 and 1911, and had collected them during those years, the moneys thus collected could not have been his gain, profit or income. It could not have escaped being simply a different form of his property or capital. If in 1906 the owner of land had sold it for the promissory notes of B secured by mortgages worth their face payable without interest ten per cent annually during ten years and had contracted to convey the land upon the payment of the notes, and A had purchased the notes prior to 1909 and had collected the amounts due on them during the years 1909, 1910 and 1911, the moneys so paid could not have been income. They must

have been but a part of A's property in another form for the amount and value of his property would be the same the moment after he collected any of them that it was the moment before. The only difference would have been that the moment before it would all have been in notes and the moment after part of it would have been in notes and part of it in cash. So when the parts of the rights and claims of these corporations which the lessees covenanted by the leases to pay for the ores came due and were received by the corporations in 1909, 1910 and 1911, the value of their property was neither increased nor diminished. The amount and the value of their unpaid claims was diminished by the amount that the value of their cash was increased by the payments and the moneys received became a part of their property.

In the application of this tax act to the numberless and varied situations which different cases present, the actual facts of each case and their real consequences must be considered and given legitimate effect regardless of misleading names and forms. The fact that the amounts which the lessees covenanted to pay are called rents or royalties in the leases or elsewhere must not be permitted to blind us to the true nature of the transactions which those leases evidenced. They were negotiated and all but one of them was executed by the individual owners of the lands prior to 1907. The land, including the right to the ore in it, was worth hundreds of thousands of dollars. Without the right to the ore it was worth practically nothing. By the leases the owners of the land granted to the lessees the absolute and exclusive right to take out and have all the ore in the land and to remove it at any time within 25 to 50 years, a time so long that it was ample to enable them to remove all of it and was equivalent to an unlimited time, and the lessees agreed to pay the yearly fixed amounts per ton for all the ore they should take and to pay the minimum amounts annually whether the ore was taken or not. The result was that the lessors granted a part of the corpus of the property, that by the grant the lessees were made the owners of the ore and the lessors the owners of the claims and of the rights to collect the amounts the lessees covenanted to pay for the ores and the transactions were in reality sales of the ore for covenants to pay the purchase price thereof. A mining lease whereby the lessee is granted the absolute and exclusive right to dig for, remove and have the mineral in the land during terms sufficiently long to enable him to remove it is in reality a sale of the ore and the royalties reserved are in fact the purchase price of it. Stoughton's Appeal, 7 Norris (88 Pa. St.) 198, 201, 202; *Scranton* v. *Phillips*, 94 Pa. St. 15, 22; *Coltness Iron Co.* v. *Black*, 6 Appeal Cases 315, 335, where Lord Blackburn says: "It was said by Lord Cairns in *Gowan* v. *Christie*, 3 Ex. D. 23, that a lease of mines 'is not in reality a lease at all in the sense in which we speak of an agricultural lease. There is no fruit; that is to say, there is no sowing and reaping in the ordinary sense of the term and there are no periodical harvests. What we call a mineral lease is really, when properly considered, a sale out and out of a portion of the land.' I think this is a perfectly accurate statement." Eley's Appeal, 103 Pa. St. 300; *Delaware, L. & W. R. R. Co.* v. *Sanderson*, 1 Atl. 394, 396; Hope's Appeal, 3 Atl. (Pa.) 23; *Caldwell* v. *Fulton*, 7 Casey (Pa.) 475; *Harlan* v. *Lehigh Coal & Navigation*

Co., 35 Pa. St. 287, 292; *Tiley* v. *Moyers*, 43 Pa. St. 404, 410; *Fairchild* v. *Fairchild*, 9 Atl. (Pa.) 255, 257. It is true that there is a decision in apparent conflict with this rational and established rule, *State* v. *Evans*, 99 Minn. 220, 223, 225, 227. But that was a decision *ex necessitate* and its effect must be limited to its special facts. The constitution of Minnesota prohibited any sale of any part of the school or swamp lands of the state otherwise than at public sale. A statute of the state had authorized mining leases of these lands. The state had made leases of many of them upon the faith of which more than $2,400,000 had been invested, when one of them was assailed on the ground that the statute was unconstitutional and the lease was void. Thereupon the court saved the leases and the statute on the grounds that if there was any doubt of the constitutionality of the law it was their duty to uphold it, that the state officers had acted upon the theory that it was valid, that it had been before the Supreme Court four times and they had rendered decisions based upon it without any challenge of its constitutionality and that it was not so clear that it was unconstitutional that it was their duty to strike it down. That decision is not persuasive in the case at bar.

If the purchase price of the ores called royalties in the leases ever became income it must have been when the leases were made. But the truth is that the leases merely changed the form of the property of the lessors from the ores to the rights and claims to the purchase price of the ores which the lessors covenanted to pay under the name of royalties, and the receipts by the corporation of the payments of the parts of those claims which fell due in 1909, 1910 and 1911 were but another substitution of the cash received for the parts of the claims paid. If the sums paid were gain, profit or income they might have been withdrawn and expended by the corporations without diminishing the value or amount of their property, but the claims are in fact diminished in amount and value by the amounts paid on them and the property of the corporations is depreciated by the same amounts unless the moneys so paid are substituted for the parts of the claims paid and remain the property of the corporations. As the claims are paid their amounts and their values decrease.

All the ores sold by some of the leases has already been extracted, the claims for its purchase price or royalties have been paid in full and the claims for them have become worthless. The ore under one of the leases was exhausted in 1911 and the claim for its purchase price or royalties then became worthless. If the amounts paid under the name of royalties for the ore taken under the exhausted leases had been income the claims for the royalties would still have been of their original value notwithstanding the payments, and the same is true of claims which have been paid in part only. These considerations compel the conclusion that these payments on the claims were not income but parts of the capital of the corporations.

There is another view of these cases sustained by the record that leads to the same conclusion. The proof is plenary and uncontroverted that the sole purpose of the owners of the claims for the royalties and purchase price of the ores and of the lands in organizing the corporations and making them the owners thereof was to collect by means of them those claims, convert the property into money

and distribute it among the grantors to the corporations, that this was the sole purpose of the stockholders of the corporations and their directors and officers in receiving the ownership of the property and that the corporations have confined their operations to so converting into money and distributing the proceeds of this property. The reason for these acts was that the interests of the owners were undivided, that they were so numerous and of such ages and conditions that a partition of the property in kind or by a conversion into money and a distribution of it had become imperative and the owners determined to effect it. Any one of these owners had the equitable right to such a partition. If one or more of them had petitioned the proper court for such relief and the court had appointed a receiver or master to collect the claims for the purchase price of the ore or royalties and to convert the property into money and distribute it among the owners according to their respective interests, could any court lawfully have held that the proceeds thus obtained were the gain, profit or income of the equitable owners? These corporations stood in the same relation to the claimants for the purchase price of the ore, or the royalties and the moneys they collected from them, and to the equitable owners of the property, their stockholders, that such a receiver would have stood. In reality they received and held these claims and the moneys collected from them in trust to distribute them among the equitable owners of the property, and the moneys they have collected were no more the income of the corporations or of their stockholders than is any part of the claims that are not collected or any other part of their property. Those collections were simply another form of the property of the corporations and of the stockholders substituted for the parts of the claims paid. The considerations which have now been stated have convinced that there was no error in the decision of the court below that the moneys collected by the corporations in 1909, 1910 and 1911 under the mining leases on the claims for the royalties on or the purchase price of the ore were not either gross or net income within the meaning of the tax act and that corporations that were, when the corporation tax act took effect on January 1, 1909, the owners of claims purchased years earlier for royalties on ores under mining leases made by their grantors whereby the absolute right to dig and have all the ore in the lands leased, which without the ore were worthless, and to remove it at any time during terms so long as to be equivalent to an unlimited time was granted to lessees and they covenanted to pay therefor yearly fixed amounts per ton for the ore extracted and minimum amounts yearly to be credited on ore subsequently removed in case sufficient to come to the minimum was not extracted in any year, are not taxable on account of the amounts coming due and received by the corporations in partial payment of those claims during the years 1909, 1910 and 1911 where their property was formerly owned and was conveyed to them by their original stockholders and the sole purpose of the conveyance and of their organization was to enable them to collect these claims, to convert the property conveyed to them into money and to divide the proceeds among their stockholders and the corporations have not engaged in mining, trading, or any other business but have strictly confined their operations to the accomplishment

of that purpose. *Stevens* v. *Hudson's Bay Co.*, 101 Law Times Reports 96, 97, 98, 99; *Foley* v. *Fletcher*, 3 H. & N. 769, 774, 778, 783, 787; *Secretary of State for India* v. *Scoble*, 89 Law Times Rep. 1, 3; *Tiley* v. *Moyers*, 43 Pa. St. 404, 410; *Gibson* v. *Cooke*, 1 Metc. (Mass.) 75.

Before assenting to these conclusions the arguments of counsel for the United States and the following authorities cited by him were read and considered:

Stratton's Independence Limited v. *Howbert*, 231 U. S. 399. But the decision in that case rests on the conceded proposition that a corporation that is engaged in mining its own property is presumed to be using its property or capital and the labor it employs in the business of mining for profit or income and that the proceeds of that business less its expenses must be presumed, in the absence of evidence to the contrary, to contain gain or income derived by the company from the business of mining from which a reasonable allowance for depreciation of the property may be deducted to find the net income which exactly measures its tax. The extent of that decision was (1) that corporations actively engaged in the business of mining their own property are subject to the corporation tax, (2) that the proceeds of ores mined by a corporation from its own premises includes presumptive gain or income from its mining business and are therefore included in its gross income within the meaning of the tax act and (3) that the allowance to be made for the depreciation of its property by reason of the extraction of the ore so mined is not the exact difference between the proceeds of the mining less the expenses thereof because such an allowance excludes the possibility of gain from, the mining business the existence of which is presumed. Pages 418, 421. The decision applies to the corporations that are the lessees and are conducting the business of mining the ores sold through these leases in the cases in hand, but it is inapplicable to the plaintiffs below because they do not and cannot get the gain or income from the mining which the lessees receive and they have not been and are not conducting the business of mining, or doing any other business for gain, but have been, were and are confining their operations to the collection of their claims and the conversion of their property into money and dividing its proceeds among the equitable owners thereof, their stockholders.

Flint v. *Stone Tracy Co.*, 220 U. S. 107, 145, 146, 170. In these cases the Supreme Court held that the rents received by a corporation engaged for profit in the business of owning and leasing taxicabs, or buildings, or ore lands constituted a part of its gross income within the meaning of the tax act. But the plaintiffs below never have been engaged in any such business. They never negotiated a mining lease. If there ever was any gain from owning and leasing any of their property it was made by their grantors more than two years before January 1, 1909, and had become a part of the property, the capital they were organized to and have confined themselves to converting into money and dividing among the equitable owners thereof, the *cestuis que trust*, and the facts of this case exclude them from the operation of the principles on which the Flint cases rest and from the effect of that decision.

Authorities to the effect that a devise of rents and profits of mineral lands with power to an executor to make leases thereof was intended by the testator to and did carry the royalties under such leases to the devisees. *Daly* v. *Beckett*, 24 Beavan's Rep. 114; Eley's Appeal, 103 Pa. St. 300, 305, 307; *McClintock* v. *Dana*, 106 Pa. St. 386; *Appeal of Shoemaker, et al.*, 106 Pa. St. 392; *Raynolds* v. *Hanna*, 55 Fed. 783, 800, 801. But these decisions are irrelevant to the construction of the corporation tax act or its application to the facts of this case, because the intent of the testator drawn from the terms of his will and his situation necessarily determined the decision in each case and the terms and purpose of each will was too far aside from the terms and object of the tax act and because the testators of these wills contemplated and authorized the business of mining by the executor by means of which he could make long or short leases. But the plaintiffs below neither mined nor made leases, but confined their operations to the mere collection of claims for royalties or the purchase price of the ores and the conversion of their property into money and its distribution, without gain to themselves, among those for whom they held it in trust before the corporation tax act took effect.

Authorities to the effect that a lessee corporation engaged in the business of mining is not forbidden by the general law that corporations conducting business for profit may not pay dividends out of capital from paying dividends out of the net proceeds of their mining business. *Lee* v. *Neuchatel Asphalte Co.*, 41 Chan. Div. 1, 27; *Excelsior Water & Min. Co.* v. *Pierce*, 90 Cal. 131, 140. But these decisions are inapplicable to the cases in hand for the same reasons as is the case of Stratton's Independence.

Authorities to the effect that the proceeds of the operation of mining and selling ore from lands owned or leased by the operating company less the expenses of operation are subject to taxes imposed by statute on "net earnings or income," or on "profits." *Commonwealth* v. *Ocean Oil Co.*, 59 Pa. St. 61, 63, 64; *Commonwealth* v. *Penn Gas Coal Co.*, 62 Pa. St. 241, 242; *Coltness Iron Co.* v. *Black*, 6 Appeal Cases 315, 335, 336; *People* v. *Roberts*, 156 N. Y. 585. But these decisions, like that of Stratton's Independence, apply only to companies actively engaged in the business of mining. The plaintiffs were not so engaged. They confined their operations strictly to the collection of claims against lessees for the purchase price of or royalties on the ore and the conversion of their property acquired years before the tax act took effect into money and its distribution among their stockholders, the equitable owners of it. They do not fall under the decisions in the cases cited by counsel for the United States nor under the rules or reasons on which they rest. They are far within the established principle that the collection of a good claim or the conversion of property by sale or otherwise into its true value in money, does not transform the proceeds into income, but merely substitutes them for the claim so collected or the property sold and leaves them in a different form, a part of the capital or property from which they were derived. A reading of the opinions of the courts, study and meditation on the terms and meaning of the tax act, on the facts of these cases and the reasons

for the propositions of counsel have convinced that such was the nature of the moneys received by the plaintiffs during the years 1909, 1910 and 1911 from their collections of their claims against the lessees for the purchase price of or the royalties on the ore, that those amounts were not a part of either the gross income or of the net income of the corporations and that the judgments of the court below were right.

It is interesting to note here, though, for the reasons stated, it is not material to the decision of this case, the ground upon which Lord Blackburn, who delivered the main opinion in the leading case of *Coltness Iron Co.* v. *Black*, 6 Appeal Cases 315, 330, 336, placed the decision in that case that the proceeds of an operating mining company were taxable as income under the English Income Tax Act. He did not place it on the ground that such proceeds were gains or profits, but on the ground that the statute which imposed a yearly tax "for every 20s. of the annual value thereof, the sum of seven pence," and provided that "the annual value of all the properties hereinafter described shall be understood to be the full amount for one year, or the average amount for one year, (and of the property of mines for five years) of the profits received therefrom within the respective times herein limited," must be construed in the light of previous English Tax legislation and practice to mean that the proceeds of the mines were the measure of this taxation. Pages 334, 335. In order to reach this conclusion he reviewed the history of English taxation from the times of Elizabeth and showed that long before any income tax was imposed coal mines were rated for taxation on the basis of their production, pages 330, 331, that this practice had been followed under the earlier statutes whether they imposed property or income taxes and from this long practice and this earlier legislation he drew the conclusion that such must have been the intention of the legislators who enacted the income tax statute and over-ruled an earlier decision to the contrary. Pages 335, 336. *Knowles* v. *McAdam*, 3 Ex. D. 23. Repeated readings of this opinion and the other opinions in that case lead to the conclusion that they are not even persuasive of the true interpretation and application of our corporation tax act because they are dominated by a long practice in taxation and a course of legislation that have never existed in this country.

There are still other reasons than those which have been stated why the judgments below should not be reversed. If there were error in the conclusion that the receipts of the companies from their collections of the amounts of their claims against the lessees which came due in 1909, 1910 and 1911 for the purchase price of or the royalties on the ore were not included in their gross income, if they were a part of that gross income, then the companies would have been entitled to "a reasonable allowance for depreciation of property" by the reduction of the values of their claims by these payments. *Stratton's Independence Limited* v. *Howbert*, 231 U. S. 399, 418. And as the payments on these claims unavoidably reduced and depreciated their value, as has been shown, by the amounts paid there would have been no net income from them on account of which an excise tax could have been lawfully exacted. *United States* v.

Nipissing Mines Co., 202 Fed. 803, 805; *Stevens* v. *Hudson's Bay Co.*, 101 L. T. Rep. 96, 97, 98.

Again, this excise tax was imposed on corporations for doing business in a corporate capacity. It is imposed on corporations "doing business" and on those only. Corporations that are the owners of property not used in business, that themselves engage in no trading, mining or other like business for gain, but confine their activities to acts necessary or incidental to the protection of their property and its conversion into money, are not "doing business" within the meaning of the corporation tax act. These companies were such owners during the years 1909, 1910 and 1911, and, as has been shown, they not only so confined their operations but in 1909 by an amendment of their articles of incorporation they disabled themselves from conducting any other operations or doing any business within the true interpretation of the tax act. They were not, therefore, taxable under that act and for that reason the judgments below are right. *McCoach* v. *Minehill Ry. Co.*, 228 U. S. 295, 305, 306, 309, 311; *Zonne* v. *Minneapolis Syndicate*, 220 U. S. 187, 190; *United States* v. *Nipissing Mines Co.*, 206 Fed. 431, 433, 434.

It is true that the court below took the opposite view of the last proposition and the companies sued out no writs of error. But there was no error in the course of the trial of the cases nor in the judgment, and a right judgment which is warranted by the record and the facts may not be reversed on the sole ground that the trial court gave a wrong reason for it. *Smiley* v. *Barker*, 83 Fed. 684, 687, 28 C. C. A. 9, 12; *Baker* v. *Kaiser*, 126 Fed. 317, 318, 61 C. C. A. 303, 304; *Buster* v. *Wright*, 135 Fed. 947, 959, 68 C. C. A. 505, 517. Let the judgments below be *Affirmed.*

Filed December 9, 1914.

(Judgment in Cause No. 4081.)

United States Circuit Court of Appeals,
Eighth Circuit. December Term, 1914.
Wednesday, December 9, 1914.

Fred von Baumbach, Collector of Internal Revenue, Plaintiff in Error,
No. 4081. *vs.*
Sargent Land Company, a corporation.

In Error to the District Court of the United States for the District of Minnesota.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that the Sargent Land Company, a corporation, have and recover against Fred von Baumbach, Collector of Internal Revenue, the sum of

Twenty-six and 25/100 Dollars for its costs herein to be collected in accordance with law.

December 9, 1914.

(Judgment in Cause No. 4082.)

United States Circuit Court of Appeals,
Eighth Circuit. December Term, 1914.
Wednesday, December 9, 1914.

Fred von Baumbach, Collector of Internal Revenue, Plaintiff in Error,
No. 4082. *vs.*
Sutton Land Company, a corporation.

In Error to the District Court of the United States for the District of Minnesota.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that the Sutton Land Company, a corporation, have and recover against Fred von Baumbach, Collector of Internal Revenue, the sum of Twenty-one and no/100 Dollars for its costs herein to be collected in accordance with law.

December 9, 1914.

(Judgment in Cause No. 4083.)

United States Circuit Court of Appeals,
Eighth Circuit. December Term, 1914.
Wednesday, December 9, 1914.

Fred von Baumbach, Collector of Internal Revenue, Plaintiff in Error,
No. 4083. *vs.*
Kearsarge Land Company, a corporation.

In Error to the District Court of the United States for the District of Minnesota.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that the Kearsarge Land Company, a corporation, have and recover against Fred von Baumbach, Collector of Internal Revenue, the sum of Twenty-one and no/100 Dollars for its costs herein to be collected in accordance with law.

(Clerk's Certificate.)

United States Circuit Court of Appeals,
Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Minnesota as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in certain causes in said Circuit Court of Appeals wherein Fred von Baumbach, Collector, etc., is Plaintiff in Error and Sargent Land Company, a corporation, is Defendant in Error, No. 4081; wherein Fred von Baumbach, Collector, etc., is Plaintiff in Error and Sutton Land Company, a corporation, is Defendant in Error, No. 4082, and wherein Fred von Baumbach, Collector, etc., is Plaintiff in Error and Kearsarge Land Company, a corporation, is Defendant in Error, No. 4083, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that on the ninth day of February, A. D. 1915, a mandate was issued out of said Circuit Court of Appeals in each of said causes, directed to the Judges of the District Court of the United States for the District of Minnesota.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals [SEAL.] for the Eighth Circuit, at office in the City of St. Louis, Missouri, this ninth day of November, A. D. 1915.

(Signed) JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals
for the Eighth Circuit.

166 In the Supreme Court of the United States, October Term, 1915.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE,
v.
SARGENT LAND COMPANY. } No. 707.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE,
v.
SUTTON LAND COMPANY. } No. 708.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE,
v.
KEARSARGE LAND COMPANY. } No. 709.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled causes that the certified copy of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Eight Circuit to the writs of certiorari granted therein.

JNO. W. DAVIS,
Solicitor General.
JOHN R. VANDERLIP,
Counsel for Respondents.

December 9, 1915.

(Endorsed:) Nos. 707, 708, & 709. In the Supreme Court of the United States. October term, 1915. Fred von Baumbach, collector, &c., v. Sargent Land Company. Fred von Baumbach, collector, &c., v. Sutton Land Company. Fred von Baumbach, collector, &c. v. Kearsarge Land Company. Stipulation as to return to writ of certiorari. Filed Dec. 17, 1915. John D. Jordan, clerk.

167 UNITED STATES OF AMERICA, *ss:*

[SEAL.] *The President of the United States of America to the honorable the judges of the United States Circuit Court of Appeals for the Eighth Circuit, greeting:*

Being informed that there is now pending before you a suit in which Fred von Baumbach, collector of internal revenue, is plaintiff in error, and Sargeant Land Company is defendant in error, No. 4081, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the district of Minnesota, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,
168 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 8th day of December, in the year of our Lord one thousand nine hundred and fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Return to writ.

UNITED STATES OF AMERICA, *Eighth Circuit, ss:*

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Fred von Baumbach, collector of internal revenue, plaintiff in error, vs. Sargent Land Company, a corporation, No. 4081, is a full, true, and complete transcript of all the pleadings, proceedings, and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this seventeenth day of December, A. D. 1915.

[SEAL.] JOHN

Clerk of the United States Court,
of Appeals for the Eighth Circuit.

Documentary revenue stamp not required.

(Indorsed:) File No. 24990. Supreme Court of the United States, No. 707, October term, 1915. Fred von Baumbach, collector of internal revenue, vs. Sargent Land Company. Writ of certiorari. Office of the clerk, Supreme Court, U. S. Received Dec. 21, 1915. Filed Dec. 17, 1915. John D. Jordan, clerk.

169 (Indorsed:) File No. 24990. Supreme Court U. S., October Term, 1915. Term No. 707. Fred von Baumbach, collector of internal revenue, petitioner, vs. Sargent Land Company. Writ of certirorari and retur .n Filed December 21, 1915.

170 In the Supreme Court of the United States, October Term, 1915.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE,
v.
SARGENT LAND COMPANY. } No. 707.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE,
v.
SUTTON LAND COMPANY. } No. 708.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE,
v.
KEARSARGE LAND COMPANY. } No. 709.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled causes that the certified copy of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit to the writs of certiorari granted therein.

JNO. W. DAVIS,
Solicitor General.
JOHN R. VANDERLIP,
Counsel for Respondents.

December 9, 1915.

(Endorsed:) Nos. 707, 708 & 709. In the Supreme Court of the United States. October Term, 1915. Fred von Baumbach, collector, &c., v. Sargent Land Company. Fred von Baumbach, collector, &c., v. Sutton Land Company. Fred von Baumbach, collector, &c., v. Kearsarge Land Company. Stipulation as to return to writ of certiorari. Filed Dec. 17, 1915. John D. Jordan, clerk.

171 UNITED STATES OF AMERICA, *ss:*

[SEAL.] *The President of the United States of America to the honorable the judges of the United States Circuit Court of Appeals for the Eighth Circuit, greeting:*

Being informed that there is now pending before you a suit in which Fred von Baumbach, collector of internal revenue, is plaintiff in error, and Sutton Land Company is defendant in error, No. 4082, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the District of Minnesota, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and
172 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the 8th day of December, in the year of our Lord one thousand nine hundred and fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Return to writ.

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari, and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Fred von Baumbach, collector of internal revenue, plaintiff in error, vs. Sutton Land Company, a corporation, No. 4082, is a full, true, and complete transcript of all the pleadings, proceedings, and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the city of St. Louis, Missouri, this seventeenth day of December, A. D. 1915.

[SEAL.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Documentary revenue stamp not required.

(Indorsed:) File No. 24991. Supreme Court of the United States, No. 708, October Term, 1915. Fred von Baumbach, collector of internal revenue, vs. Sutton Land Company. Writ of certiorari. Office of the Clerk, Supreme Court U. S. Received Dec. 21, 1915: Filed Dec. 17, 1915. John D. Jordan, clerk.

173 (Indorsed:) File No. 24991. Supreme Court U. S., October term, 1915. Term No. 708. Fred von Baumbach, collector of internal revenue, petitioner, vs. Sutton Land Company. Writ of certiorari and return. Filed December 21, 1915.

174 In the Supreme Court of the United States. October Term, 1915.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE,
v.
SARGENT LAND COMPANY. } No. 707.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE,
v.
SUTTON LAND COMPANY. } No. 708.

FRED VON BAUMBACH, COLLECTOR OF INTERNAL REVENUE,
v.
KEARSARGE LAND COMPANY. } No. 709.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled causes that the certified copy of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit to the writs of certiorari granted therein.

JNO. W. DAVIS,
Solicitor General.
JOHN R. VANDERLIP,
Counsel for Respondents.

DECEMBER 9, 1915.

(Endorsed:) Nos. 707, 708 & 709. In the Supreme Court of the United States. October term, 1915. Fred von Baumbach, collector, &c., v. Sargent Land Company. Fred von Baumbach, collector, &c., v. Sutton Land Company. Fred von Baumbach, collector, &c., v. Kearsarge Land Company. Stipulation as to return to writ of certiorari. Filed Dec. 17, 1915. John D. Jordan, clerk.

175 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, greeting:

[SEAL.]

Being informed that there is now pending before you a suit in which Fred von Baumbach, collector of internal revenue, is plaintiff in error and Kearsarge Land Company is defendant in error, No. 4083, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the District of Minnesota, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals
176 and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 8th day of December, in the year of our Lord one thousand nine hundred and fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Return to writ.

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the

transcript of record furnished with the application for a wri
certiorari in the case of Fred von Baumbach, collector of inte
revenue, plaintiff in error, vs. Kearsarge Land Company, a corp
tion, No. 4083, is a full, true, and complete transcript of all the pl
ings, proceedings, and record entries in said cause as mentione
the certificate thereto.

In testimony whereof, I hereunto subscribe my name and
the seal of the United States Circuit Court of Appeals for
Eighth Circuit, at office in the city of St. Louis, Missouri,
seventeenth day of December, A. D. 1915.

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit
Court of Appeals for the Eighth Circu

Documentary revenue stamp not required.

(Indorsed:) File No. 24992. Supreme Court U. S., Oct
term, 1915. Term No. 709. Fred von Baumbach, collector of
ternal revenue, petitioner, vs. Kearsarge Land Company. Writ
certiorari and return. Filed December 21, 1915.

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